

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT HOMA BAY
CRIMINAL CASE NO. E005 OF 2024

REPUBLIC.....
.....PROSECUTOR

VERSUS

GEORGE OUMA OCHOLA alias
ODHIAMBO NDONGA..... 1ST
ACCUSED

RICHARD ONYANGO ODHIAMBO
Alias NYODHIAMBO..... 2ND
ACCUSED

LUKE OTIENO AMOLE..... 3RD
ACCUSED

SAMUEL OCHIENG OTIENO
Alias OCHIENG OLEWE..... 4TH
ACCUSED

RULING

[1] The accused persons herein were arraigned before the Court on 5th February 2024, on the Information by the Director of Public Prosecution that they had committed that offence of murder, thereby contravening the provisions of **Section 203** as read with **Section 204** of the **Penal Code, Chapter 63** of the **Laws of Kenya**. It was alleged that on the 16th day of January 2024 at

Kachuo Village in Rangwe Sub County within Homa Bay County, they jointly murdered Lameck Ochieng Ogal. The accused denied that Charge and the Prosecution called evidence from a total of 9 witnesses in proof of the allegations.

[2] Pursuant to **Section 306(1)** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya**, it is imperative that, at the close of the Prosecution Case, a determination be made as to whether a *prima facie* case has been made out against the accused person to require him to answer. The rationale for this was aptly expressed in **Ramanlal Trambaklal Bhatt -Vs- Republic [1957] EA 332** thus:

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one:-

“Which on full consideration might possibly be thought sufficient to sustain a conviction.”

This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case.

Nor can we agree that the question whether there is a case to answer depends only on whether there is:-

“some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence.”

A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence. It is true, as Wilson, J., said, that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by a “*prima facie case*,” but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”

[3] Accordingly, I have given careful consideration to the evidence on record with a view of ascertaining whether it is evidence upon which the Court would be prepared to convict if no

explanation is offered by the accused person. There is credible evidence that the deceased herein, **Lameck Ochieng Ogal**, died on the 16th January 2024. He was suspected of having stolen a gas cylinder from his mother and the mother, **Lucy Atieno Ogal** (PW4), reported the matter to the area village elder for assistance. The village elder enlisted the help of the community policing team in the village whose membership included the four accused persons. Evidence was presented to demonstrate that the accused persons looked for the deceased and beat him up in a bid to extract information from him that would lead to the recovery of the stolen items.

[4] The evidence adduced by the Prosecution further shows that, although the gas cylinder was recovered, the deceased did not survive the ordeal. He succumbed to his injuries and PW7 who conducted postmortem on the body formed the opinion that the cause of death was blunt trauma on the head with spinal cord injuries.

[5] In the circumstances, there is *prima facie* proof that the injuries that led to the death of the deceased were inflicted by the accused persons. They are accordingly hereby placed on their defence to answer the Charge of Murder pursuant to **Section 306(2)** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya**.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT HOMA BAY THIS 19TH
DAY OF MARCH, 2026**

.....

OLGA SEWE

JUDGE

ORIGINAL