

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CRIMINAL CASE NO. 15 OF 2017

MONICA MWOLYO.....2ND ACCUSED/APPLICANT

KILO MWOLYO.....1ST ACCUSED/APPLICANT

-VERSUS-

REPUBLIC.....PROSECUTOR/RESPONDENT

R U L I N G

1. The Accused herein, **Monica Mwolyo and Kilo Mwolyo** are both jointly charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**.

2. The particulars of the charge sheet are that on 22nd August, 2017, at Mbusyani village, Kisasi sub-county, the Accused persons jointly murdered Mwolyo Komu, the husband and father to the 1st Accused and 2nd Accused respectively. They both denied committing the offence. The prosecution has called 9 witnesses in support of their case and this court is now being called upon to determine whether the Accused persons jointly or any of them has a case to answer.

3. The Accused person have submitted through counsel that they have no case to answer because in their view the prosecution's case hangs on hearsay. They fault the police for failure to avail eye witnesses to the incident. They submit that the circumstantial evidence tendered is weak and rely on the decision of **Joan Chebichim Sawe –versus- Republic (2003) eKLR** where the court of appeal observed that for an inference of guilt to be inferred the evidence tendered must be incompatible with the innocence of the Accused or incapable of any other explanation other than that of his/her guilt. They have also relied on **Republic –versus-Wona Kingoo & Another (2019) eKLR** where the court found that the prosecution's evidence was weak and unsustainable.

4. This court has evaluated the evidence tendered and finds that the prosecution's case has attained the threshold required in law (*prima facie* basis) to place the Accused persons on their defence. They have a case to answer and their rights/options under **Section 211 of Criminal Procedure Code** shall be explained to them.

DATED, SIGNED AND DELIVERED AT KITUI THIS 18TH DAY OF MARCH, 2021.

HON. JUSTICE R. K. LIMO

JUDGE