



**REPUBLIC OF KENYA**

**IN THE REPUBLIC OF KENYA**

**AT KAKAMEGA**

**CRIMINAL CASE NO. 49 OF 2012**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**STANLEY NGAIRA MUSINDI.....ACCUSED**

**RULING**

1. The accused person herein STANLEY NGAIRA MUSINDI was jointly charged with one JOHN CHIVILI CHOMBI (now deceased) with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars being that on diverse dates between 24<sup>th</sup> day of November, 2012 and 26<sup>th</sup> day of November, 2012, at Shipala Village, Lunyu Sub-Location in Kakamega East District within Kakamega County, jointly murdered JOSIAH ATSANGO MUSINDI. The accused has denied committing the offence.

2. In support of its case, the prosecution called a total of 7 witnesses, among them Dr. Dixon Mchana Mwaludindi who was PW7. The doctor testified that the deceased suffered a fracture of the small bone in the front of the neck, fracture of the neck involving the first and second neck bones as well as injury to the spinal cord, at level of the first and second bones. PW7 told the court that the cause of death was asphyxia due to manual strangulation.

3. The issue for determination at this stage is whether the evidence on record is such that the accused ought to be put on his defence. I have carefully considered the said evidence in line with the principles set out in the case of **Bhatt – vs – Rex[1957] E.A 332**, and I am satisfied that the prosecution has established a prima facie case requiring the accused to be put on his defence. I accordingly do so.

4. In defending himself, the accused may give either sworn or unsworn evidence and in either case he may call witnesses. If he elects to give sworn evidence, he may be asked questions both by the court and the prosecution.

5. In case he gives unsworn evidence, he will not be asked any questions. The accused may also elect to say nothing in his defence and let the court decide the case on the evidence that is before it.

6. It is now up to the accused person to say which mode of defence he will adopt.

Orders accordingly

**Ruling delivered, dated and signed in open court at Kakamega on this 26<sup>th</sup> day of April, 2019**

**RUTH N. SITATI**

**JUDGE**

In the presence of:-

.....Mr. Ngetich.....for the State

.....Mr. Luchivya holding brief for Mr. Osango.....for the Accused

.....Polycap Mukabwa.....Court Assistant