



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**CRIMINAL CASE NO. 20 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**KARISA MAITHA THOYA *alias* NDISO.....1<sup>ST</sup> ACCUSED**

**SAID KARISA MAITHA *alias* MOTO.....2<sup>ND</sup> ACCUSED**

**BAYA KARISA MAITHA.....3<sup>RD</sup> ACCUSED**

**CLIENTONE KAZUNGU KARISA MAITHA.....4<sup>TH</sup> ACCUSED**

**Coram: Hon. Justice R. Nyakundi**

**Ms Sombo for the State**

**Mr. Mouko for the Accused persons**

**RULING**

The four accused persons were jointly charged with the offence of murder contrary to Section 203 of the Penal Code. The brief facts of the case are that on 24<sup>th</sup> November, 2016 at Duke village in Chamari Sub-location, the accused jointly with others not before court murdered **Jeremiah Komoro Guyo**.

The accused persons upon indictment pleaded not guilty to the charge. In that view the prosecution had a duty under section 107(1) of the Evidence Act to prove the charge beyond reasonable doubt.

**Mr. Mouko** represented the accused persons and the State was represented by Prosecution Counsel set by **Ms. Babra Sombo**. The scope of the prosecution case was based on the evidence of six witnesses.

At the close of the prosecution case under Section 306(1) of the Criminal Procedure Code the prosecution.

The prosecution or defence counsel may submit on a motion of no case to answer that the following ingredients of the offence against the accused persons or persons remain unproven:

- a) That the deceased is dead;***
- b) That the death was caused unlawfully;***
- c) That there was no malice aforethought;***
- d) Finally, that the accused persons were never directly or indirectly involved in the murder of the deceased.***

Therefore, on a motion of no case to answer if on the evaluation of the evidence of the six witnesses it appears to the court that no case has been made out against any of the accused persons sufficiently to require them to be placed on their defence the court has a duty to enter a

verdict of not guilty and order for their acquittal.

On the other hand, if the analysis of the evidence reveals the existence of the elements for the offence of murder the accused persons shall be required to proceed to state their defence including calling of witnesses or take any other steps as provided for in Section 306(2) of the Criminal Procedure Code.

An important point is that any consideration of the evidence at this state should be kept at a minimum to avoid any conclusions made to finality.

In **Sanjit Chaitlal v the State 1985 59 WLR 925** the court said:

***“A submission that there is no case to answer may properly be made and upheld:***

***a) when there has been no evidence adduced by the prosecution to prove an essential element in the alleged offence***

***b) when the evidence adduced by the prosecution has been so discredited that no reasonable tribunal could safely convict on it. See also R.T. Bhatt v R 1957 EA 332.***

In the instant case I have taken into account on what each witness claimed to have known or seen in regard with the death of the deceased. These events and other occurrence satisfactorily establish a prima facie case against the accused persons.

On this evidence two substantive issues arise in the commission of the crime as framed in law. That the deceased death remains undisputed. Secondly, his death falls within the doctrine of common intention under section 21 of the Penal code. That two or more persons were involved actively in the commission of the offence.

On the evidence on record which is mainly circumstantial there is a causal connection between the death of the deceased and some unlawful conduct of the perpetrators.

It is in this context I make a finding that the prosecution has discharged the burden of proof of a prima facie case to warrant each one of them to be called upon to proceed and offer his defence in rebuttal.

It so ordered.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 24<sup>TH</sup> DAY OF SEPTEMBER, 2019.**

.....

**R. NYAKUNDI**

**JUDGE**

**In the presence of: -**

Accused persons