



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 16 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

DOYO GALGALO.....1<sup>ST</sup> ACCUSED

GALMO GUYO GALGALLO ALIAS MAKAYANGU.....2<sup>ND</sup> ACCUSED

BOKAYO DIDA BORU ALIAS WARABO .....3<sup>RD</sup> ACCUSED

SOMO HUKA KANCHORO ..... 4<sup>TH</sup> ACCUSED

RULING

**Case to Answer**

1. The accused persons were charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code CAP 63 of the Laws of Kenya. The prosecution closed its case on 1<sup>st</sup> July 2019; after having called 10 witnesses. What now falls for determination by the court is whether the prosecution has established a prima facie case against the accused persons as to call upon them to enter their defence. See Section 306 of the Criminal Procedure Code which provides that:-

**306. (1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.**

**(2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.**

**(3) If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon him to enter upon his defence.**

2. A Prima facie case has been said to be;

**‘...one which a reasonable tribunal properly directing its mind to the law and the evidence would convict if no explanation is offered by the defence’. See RAMANLAL BHATT vs. R (1957) EA 332(CA)**

3. The accused persons are facing a charge of murder. Ten witnesses gave evidence for the prosecution. Majority of these witnesses were protected witnesses. The prosecution filed quite comprehensive submissions; except they appear to be final submissions. They also cited a number of judicial decisions on this subject. The core argument by the prosecution was that this matter is beyond tribal issues that bedevil that region; it was a calculated move to kill the chief. They stated that the evidence show common intention amongst the accused to commit the crime which is sufficient to establish prima facie case.

4. The accused persons also filed submissions through their legal counsels. The submissions are detailed and quite comprehensive. The thread that runs in those submissions is that the witnesses were not credible; some could not state the clothes the accused wore at the time; others did not see the accused at the scene; and each gave a different version of the words allegedly uttered by the accused. They also stated that there was no identification parade conducted by the police. Again, they argued that the police did not produce any sketch plan for the court to appreciate the layout of the scene of crime which they regarded as an important factor in this case. The 3<sup>rd</sup> accused literally claimed that there was no investigation carried out on this matter to connect him with the offence. According to them this case is merely a hype of the tribal animosity amongst tribes who live in the region. They therefore urged the court to find that the prosecution has not established a prima facie case.

5. Doubtless, it was proved that the deceased died. The evidence shows that he was attacked and killed on 16<sup>th</sup> December 2018 when he attended the burial of one Doko Galgalo. I have perused and carefully considered the evidence of the prosecution witnesses in relation to the accused persons and the charge they are facing. In the absence of evidence to the contrary, the prosecution has established a prima facie case against the accused persons. Accordingly, they are hereby placed on their defence.

6. The accused persons have been duly informed of the right to address the court, either personally or by their advocate, to give evidence on their own behalf, or to make an unsworn statement, and to call witnesses in their defence. The accused or their advocate is required to state whether they intended to call any witnesses as to fact other than the accused persons. Section 306 of the CPC complied with. It is so ordered.

**Dated and signed at Meru in open court this 29<sup>th</sup> October, 2019**

-----

**F. GIKONYO**

**JUDGE**

**In presence of**

**Kiget for 3<sup>rd</sup> accused**

**M/s Amunga for DPP**

**Anjenga for 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> accused**

.....

**F. GIKONYO**

**JUDGE**