



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**CRIMINAL CASE NO. 21 OF 2018 [MURDER]**

**(CORAM: HON. R.E. ABURILI - J)**

STATE.....PROSECUTION

VERSUS

RAPHAEL MATENGO CHIAJI.....ACCUSED

**RULING ON CASE TO ANSWER UNDER SECTION 306 (2) OF THE CRIMINAL PROCEDURE CODE**

1. The accused person herein **Raphael Matengo Chiaji** stands charged with the offence of Murder contrary to **Section 203 as read with Section 204 of the Criminal Procedure Code**.
2. This is as per the information dated 9/10/2018 signed by David M. Okachi, Senior Principal Prosecution Counsel, Siaya County for the Director of Public Prosecutions. The accused took plea on 17/10/2018 denying the charge. The hearing commenced on 18/12/2018 as scheduled.
3. The Prosecution called 10 witnesses who testified on oath and on 22/10/2019 the Prosecution closed its case.
4. The Defence counsel, Mr. Mirembe submitted contending that the Prosecution had not proved its case against the accused person beyond reasonable doubt. He urged the court to acquit the accused at this stage.
5. It was submitted that the prosecution did not call one Kevin Ayoma to corroborate PW2's testimony and that there was contradiction in the evidence adduced by prosecution witnesses. It was submitted that the prosecution evidence was not clear and that there was no indication as to where the deceased was between 18<sup>th</sup> and 22<sup>nd</sup> (sic) when he was found dead. It was contended that the evidence on record did not connect the accused to the offence and that treatment notes are inconsistent.
6. Counsel relied on several authorities and submitted that suspicion however strong cannot lead to a conviction. He urged the court to acquit the accused person and set him at liberty.
7. Prosecution counsel Mr. Namasake holding brief for Mr. David Okachi relied on the testimonies of witnesses on record.
8. I have considered the submissions by Defence counsel Mr. Mirembe and the evidence adduced on record by the ten prosecution witnesses.
9. The burden of proof lies with the prosecution throughout the trial to prove the guilt of the accused person beyond reasonable doubt and that burden does not shift to the accused person. However, at this stage, the court is not expected to determine the guilt of the accused person. What is required of this court is to determine whether on the evidence adduced by the Prosecution witnesses, a **prima facie** case has been established against the accused person to warrant him being placed on his defence.
10. A **prima facie** case is not necessarily one that must succeed but that there is evidence on record requiring a defence thereto.
11. Having carefully considered the prosecution evidence as a whole, and as delving into the in-depth merits thereof will prejudice the accused person, I am satisfied that the prosecution have established a **prima facie** case against the accused person necessitating his being placed on his defence. Accordingly, I find and hold that the accused has a case to answer, in accordance with Section 306(2) of the Criminal Procedure Code which is hereby explained to the accused person.

Orders accordingly.

**Dated, Signed and Delivered at Siaya, this 28<sup>th</sup> Day of October 2019.**

**R.E. ABURILI**

**JUDGE**

**In the presence of:**

Mr. Okachi SPPC for State

Accused person present

Mr. Mirembe Advocate for the accused person

CA: Brenda and Modestar