



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**CRIMINAL CASE NO. 22 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**RAJABU KAINGU CHENGO.....1<sup>ST</sup> ACCUSED**

**SARANGI KATANA NDOKOLANI.....2<sup>ND</sup> ACCUSED**

**KARANI KEA NDUNDA.....3<sup>RD</sup> ACCUSED**

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

**Ms Sombo for the State**

**Mr. Ogeto for the Accused persons**

**RULING**

The three accused persons were arraigned in court charged with the offence of murder contrary to Section 203 of the Penal Code. Each of the accused pleaded not guilty to the allegations of killing **Kazungu Karabu Nzao** on 3<sup>rd</sup> October, 2015 at Mkwajuni village within Kilifi County.

In the present case consistent with Article 50(2)(a) of the Constitution and Section 107(1) of the Evidence Act. Ten witnesses testified to discharge the burden of proof of beyond reasonable doubt.

The charge as initiated under Section 203 of the Penal Code requires the prosecution to establish the following ingredients:

- 1. The death of the deceased.***
- 2. That his death is unlawful.***
- 3. That in closing death the accused had malice aforethought***
- 4. Finally, that the accused persons thought direct or circumstantial evidence were positively identified or recognized as the perpetrators of the crime.***

The mensrea is required for the offence is provided for in Section 206 of the Penal code. The underlying principle is the intention to cause death or to do grievous harm.

In **Sault Ste Marie 1978 SCR 1299** the court stated that:

***“Where the offence is criminal, the court must establish a mental element namely, that the accused who committed the prohibited act did so intentionally, or recklessly, with knowledge of the facts constituting the offence or with blindness toward them. More negligence is excluded from the concept of the mental element required for conviction within the context of a criminal prosecution a person who fails to make such inquiries as a reasonable and prudent person would make, or who fails to know facts he should have known is guilty in the eyes of the law.”***

I have reviewed the evidence of the ten witnesses and I am satisfied that there is sufficient evidence to justify the finding of a prima facie case to warrant the accused persons to be called upon to answer the charge in terms of Section 306(2) as read with Section 307 of the Criminal Procedure Code.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 23<sup>RD</sup> DAY OF DECEMBER, 2019.**

.....

**R. NYAKUNDI**

**JUDGE**

**In the presence of: -**

Accused persons