

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

HCCR NO. 27 OF 2015

(FORMERLY MERU HIGH COURT NO. 8 OF 2014)

REPUBLIC.....PROSECUTOR

VERSUS

MARTIN MUINDI.....1ST ACCUSED

WILLIAM KIMATHI.....2ND ACCUSED

R U L I N G

1. **MARTIN MUINDI** and **WILLIAM KIMATHI** are jointly charged with the murder of **F M** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence as presented on the information presented to this court are that on the 7th February, 2014 within Tharaka Nithi County, the two accused persons herein jointly with others before the court murdered **F M**, the deceased herein. The two denied the charge and the matter was set for trial.

2. The prosecution called seven (7) witnesses to prove their case against the accused person herein. At the close of the prosecution's case, both the defence and the prosecution filed their respective submissions on whether or not the accused persons has a case to answer. At this stage of the proceedings this court is required to consider on the basis of the evidence tendered by the prosecution whether a prima facie case has been made out sufficient enough to call the accused persons to defend themselves. A prima facie case was aptly described in the case of ***RAMANLAL TRAMBAKLAL BHAT -VS- REPUBLIC [1957] CA*** where the court inter alia noted that a prima facie case is on "***which on full consideration might possibly be thought sufficient to sustain a conviction***" and where "***a reasonable tribunal properly directing its mind to the law and evidence could convict if no explanation is offered by the defence.***"

3. The prosecution has submitted that the evidence they have presented in this case has in their view established a prima facie case. It is submitted that there is no dispute that **F M** (deceased) is dead and that the cause of death as tendered by **PW6** was uncontested. It is further contended that the deceased was killed by the accused on the pretext that he was a thief when it was well known that he was mentally challenged.

4. The prosecution has pointed out at the evidence tendered by **Dickson Mwenda Nyaga (PW1)** and **Caroline Kawira (PW3)** submitting that the evidence tendered links the accused persons herein with the murder of the deceased. The prosecution has also given weight to the investigation and the evidence tendered by the investigating officer **P.C Joel Mosiere (PW7)** submitting there was sufficient evidence to show that the deceased was murdered and set ablaze in an attempt to conceal evidence.

5. The accused persons through their counsel have submitted that the evidence tendered by the prosecution is insufficient and littered with numerous gaps which gaps it is submitted should not be filled by calling upon the accused persons to defend themselves. The defence has contended that from the totality of the evidence tendered by the prosecution, there was no evidence linking them with the murder of the deceased herein. In their view the accused met his untimely death at the hands of a rowdy people and that the evidence of investigating officer was based on the theoretical and presumptions conclusions as opposed to factual analysis of the surrounding circumstances.

6. The accused persons have further submitted that the element of malice aforethought was not established against them. In their view given the evidence tendered it is not possible to assign an intention to harm the deceased by one or any of the accused persons herein because in their view to establish malice aforethought it is imperative to demonstrate who inflicted the injuries sustained by the deceased.

7. This court has carefully considered the evidence tendered by the prosecution. I have also considered the submissions made by both the prosecution and the defence. This court does not wish at this stage to delve much on the analysis of the evidence tendered as doing so may prejudice the positions of parties to this trial but it suffices to say that using the principle in ***RAMANLAL BHAT'S*** case I am satisfied that the evidence tendered by the prosecution in this trial clearly placed both the accused persons at the scene of murder. The deceased was murdered and attempts made set the body ablaze. I find that a prima facie case has been established that warrants both the accused persons to be placed on their defence pursuant to the provisions of **Section 306(2)** of the **Criminal Procedure Code**. They both have a case to answer.

Dated and delivered at Chuka this 31st day of January, 2018.

R. K. LIMO

JUDGE

Ruling signed, dated and delivered in the presence of Machirah for state and in presence of accused persons.

R.K. LIMO

JUDGE

31/1/2018