



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL DIVISION.

CRIMINAL (MURDER) CASE NO. 58 OF 2015

REPUBLIC.....PROSECUTOR

V E R S U S

GABRIEL ANAMI.....ACCUSED.

RULING

THE CHARGE

1. In this case, Gabriel Anami is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code, the particulars being that on the 25th day of May 2009 at Itenyi sub – Location Muranda location of Kakamega East District within Kakamega County, he murdered DAVID OTUYA SHIROKHO. The accused denied committing the offence.

THE PROSECUTION CASE.

2. Without going into the details, the prosecution called seven (7) witnesses in an attempt to establish a nexus between the death of the deceased and the accused. I have carefully read the evidence given by each of the seven (7) witnesses. Of the seven witnesses, only one of them was an eye witness. That was Miriam Amakobe who testified as PW1. She told the court how at about 5.00 pm , on the fateful day and after hearing some noises and she went out of her house and saw the accused cutting the deceased with a panga and then running away, leaving the panga at the scene.

3. Dr. Dixon Mchana Mwaludindi who testified on behalf of Dr. Oreke Benard of Webuye sub county Hospital , produced the post mortem report prepared by Dr. Oreke . According to Dr. Oreke , the cause of death was severe head injury caused by sharp penetrating head trauma. The form was signed by Dr. Oreke on 26/05/2009. The same was produced in evidence as Pexhibit 1.

ISSUE FOR DETERMIANTION

4. At the close of the prosecution, case counsel for the defence submitted that the prosecution had not established a prima facie case to warrant the accused being put on his defence. Counsel urged the court to so find and to acquit the accused at this stage. The question that arises for determination is whether the evidence on record establishes a prima facie case against the accused herein.

ANALYSIS

5. It is now trite, the court is not concerned with the merits and demerits of the case. What the prosecution needs to prove at this stage is that the evidence so far adduced is such that if accused does not say anything about it the court would be prepared to convict the accused.

6. After going through the evidence on record and applying the principle stated above I am satisfied that the prosecution has established a prima facie case against the accused herein to warrant his being put on his defence. I proceed to place him on his defence to answer the charge of murder. In doing so, the accused may give sworn or unsworn evidence. If he gives unsworn evidence the law does not allow any party to ask him any questions. He may on the other hand elect to give sworn evidence or decide to remain silent and let the court decide the case on the evidence before court. If accused chooses to testify under oath he may be cross examined by both the prosecutor and the court. He is at liberty to call witnesses if he chooses to testify.

7. It is now the duty of the accused to indicate to the court how he intends to conduct his defence.

It is so ordered.

Ruling delivered, dated and signed in open court here at Kakamega this 21st day of March 2018

R.N. SITATI

JUDGE

In the presence of :-

Mr. Juma (present).....for prosecutor

Mr. Ondeche (present).....for accused.

Court AssistantPolycap

Mrs. Muleshe holding brief for deceased's family