



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 60 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOSEPH MUTUA KIMANZI.....1<sup>ST</sup> ACCUSED**

**JOSEPH MUSYOKA MUVENGI.....2<sup>ND</sup> ACCUSED**

**STEPHEN MUTHUI KAMONZO.....3<sup>RD</sup> ACCUSED**

**R U L I N G**

1. **Joseph Mutua Kimanzi, Joseph Musyoka Muvengi and Stephen Muthui Kamonzo**, the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Accused respectively are jointly charged with the offence of **Murder** of **Joseph Muthui Katu** in the 1<sup>st</sup> Count and **Musili Munyasya** in the 2<sup>nd</sup> Count.

2. Facts of the case were that the Deceased were watchmen at **Musuani Trading Centre**. On the nights of **25<sup>th</sup> and 26<sup>th</sup> October, 2010** some shops were broken into. PW1 **Paul Munyasia Maluki** who was woken up by the dog that was barking noticed people outside his shop. He stood at a strategic place in the house and managed to identify the 1<sup>st</sup> Accused. He used his bow and arrow and shot at the people. The people ran away. In the meantime his family mobilized people. The area administrators and police were informed. It had rained. The people followed shoe/footprints that led them to a homestead where a person identified as the 2<sup>nd</sup> Accused escaped. A blood stained club was however recovered. Another person identified as the 3<sup>rd</sup> Accused also ran away but some bow and arrows with initials 'NK' stated to belong to one of the witnesses which were in possession of the Deceased watchmen were recovered. One of the suspects who ran away was stated to have been in possession of a yellow paper bag that contained a T-shirt with fresh blood stains, a sketch plan with buildings and names of the roads, safaricom sim wallets (3) and a voter's card bearing the 1<sup>st</sup> Accused person's name and a religious card. When he slipped and fell as he was pursued he left the items behind.

3. The police took possession of the items and continued with investigations that culminated into the arrest of the Accused persons. The two (2) bodies were subjected to autopsy and the cause of death established.

4. To call upon the Accused persons to defend themselves, the Prosecution is duty bound to establish a *prima facie* case against them. Such a case was stated in **Bhatt vs. Republic (1957) EA 332** as:

***“.....a prima facie case is made out if, at the close of the prosecution the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is a “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence.”***

5. At the close of the Prosecution's case the evidence adduced against the Accused persons require them to address the Court in their defence.

6. It is so ordered.

**Dated, Signed and Delivered at Kitui this 23<sup>rd</sup> day of May, 2018.**

**L. N. MUTENDE**

**JUDGE**