



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL DIVISION
CRIMINAL (MURDER) CASE NUMBER 26 OF 2013
REPUBLIC.....PROSECUTION
VERSUS
BONFACE LUTE SHIKUBU.....ACCUSED
CORAM: LADY JUSTICE RUTH N. SITATI
RULING

The charge:

1. The accused herein, BONFACE LUTE SHIKUBU is before this court on one count of **murder Contrary to Section 203 as read with Section 204 of the Penal Code**, the particulars being that on the 9th day of May, 2013 at Iraso Village, Shingoto Sub-Location in Kakamega East District within Kakamega County, jointly with others not before court, murdered FELIX KIZITO LUGALE. The accused pleaded not guilty to the charge when he took plea on 23rd July, 2013.

The Prosecution Case

2. The prosecution called five (5) witnesses who testified in support of the case against the accused. PW1 was STELLAH MUTESHI, a sister of the deceased. She did not witness the incident. REGINA BUSOLO testified as PW2. She did not also witness the incident, but both PW1 and PW2 went to the scene and saw the body of the deceased which had stab wounds in the throat. PW2 stated that when she saw the accused, his clothes were all blood stained and that the accused was brought from the house near where the body of the deceased was lying.

3. PW3 in this case was CLEMENTINA KHASIALA KAROLI. She is the mother of the deceased but like PW1 and PW2, she did not witness the incident which led to the death of the deceased. What she stated however was that the accused had locked himself in a house that was close to where the deceased's body lay, and that the police had to get the accused out of that house by force

4. Dr. DIXON MCHANA MWALUDINDI testified as PW4. He is the one who carried out the post mortem examination on the body of the deceased. Dr. Mchana confirmed that the deceased's body had a stab wound on the right side of the chest and that internally there was fracture on the first rib on the right side with penetration of the upper and middle lobes of the right lung, as well as massive bleeding into the right side of the chest. In Dr. Mchana's opinion, the cause of death was massive bleeding into the right side of the chest secondary to stab wounds following assault. The post mortem report was produced in evidence as Pexhibit 1.

5. Number 235077 Inspector Samuel Kimutai was PW5. He is the one who investigated the case. He went to the scene and established from villagers that the accused and deceased used to have consistent quarrels. He also established that the body of the deceased was lying on a footpath adjacent to a house in which the accused was found hiding. On breaking into the house, the accused was found hiding under the bed. There were also freshly washed clothes – shirt and trouser – inside the house. The police recovered a panga and a kitchen knife, plus a hoe from the accused's house.

6. After further investigations, PW5 decided to charge the accused with the murder of the deceased.

Issue for Determination

7. The issue for determination is whether the prosecution has established a prima facie case to warrant the accused being placed on his defence.

Determination

8. Applying the principles in the case of *Bhatt – versus – R [1957]EA 332*, I am satisfied that the prosecution has established a prima facie case requiring the accused to be put on his defence. The accused is accordingly put on his defence.

9. In defending himself, the accused may give sworn or unsworn evidence. In either case, the accused is at liberty to call witnesses. If he chooses to give unsworn evidence no questions will be put to him but if he gives sworn evidence, both the court and the prosecution may ask him questions. If the accused does not wish to say anything in his defence, he can remain silent and let the court decide the case on the evidence that is before it.

10. The accused may now indicate to the court how his intends to proceed with his defence.

Orders accordingly.

Ruling written and signed at Kapenguria

RUTH N. SITATI

JUDGE

Ruling delivered, dated and countersigned in open court at Kakamega this 22nd day of June 2018.

RUTH N. SITATI

JUDGE

In the Presence of

Mr. Ngetich for the state

Mr. Nyakuli for the accused

Polycarp Mukabwa - Court Assistant