



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 24 OF 2015

REPUBLIC.....PROSECUTOR

V E R S U S

ANTONY TITO WAMBOKO.....1ST ACCUSED

CHARLES ODINGA.....2ND ACCUSED

R U L I N G

Antony Tito Wamboko and Charles Odinga (herein referred to as the 1st and 2nd accused respectively) are charged with murder contrary to section 203 as read with section 204 of the penal code. The particulars of the offence are that on the 9th March 2015 at Mulunyu village, Sichirai sub location Shieywe location within Kakamega County jointly murdered Silas Khadera (herein referred to as the deceased).

The case for the prosecution is that the accused and the deceased were from the same village. That on the material day at 9.30 am one by name Jacob Ochieng PW3 was passing by the home of the 1st accused when the 1st accused called him and told him that they had arrested a thief. That he went into the home of the 1st Accused. He entered into a house at the home and found the deceased being detained in the house. He was told that the deceased had stolen a hen. He found other people there including Christine Mathias and Nsomo Baraza. He tried to reason out with the 1st accused on the cause of action to take but they did not agree. The people then started to beat the deceased. The people were the 1st accused, his mother called Ayuma, Maurice (the 2nd accused) and Ezekiel Maguma. He and some other people tried to intervene to no avail. The deceased was removed outside and the people continued to beat him. He was beaten for hours.

Benjamin Mutambwa PW1 found the deceased being beaten on the way side at 2 pm. The people he found beating the deceased were the 1st accused and a lady who was said to be the mother to the 1st accused. Dorothy Sally PW2 went to the scene at the same time and found the deceased being beaten by the 1st accused and his mother. The deceased then died.

A report was received at Kakamega Police Station on the incident. CPL Phoebe Oluoch PW6 and other police officers proceeded to the scene. They collected the body. On 11/3/17 a postmortem was performed on the body by Dr. Muchana PW5. He formed an opinion that the cause of death was due to extensive soft tissue injuries secondary to blunt trauma following assault. PC

Oluoch thereafter re- arrested the two accused from members of the public. she charged them with the offence.

Jacob Ochieng PW3 stated that the deceased was in possession of a hen when he found him in a house at the home of the 1st accused. Benjamin Mutumbwa

PW1 stated that he found the deceased with a hen when he was being beaten. Dorothy PW2 stated that she saw a hen at the place the deceased was being beaten.

The prosecution evidence is that the deceased was beaten to death on accusations that he had stolen a hen. The question is whether the prosecution has established a prima facie case against the two accused persons.

A prima facie case, it has been held is-

“ ... One on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence “.See Ramanlal Trambaklal Bhatt Vs Republic (1957) E.A. 332.

The accused are among the people said to have beaten the deceased to death for stealing a hen. I find that the prosecution has established a prima facie case against the accused persons to require them to make a defence. The accused have a case to answer and are accordingly

placed to the in defence.

Dated and delivered in open court at Kakamega this 26th day of September,2018

J. NJAGI

JUDGE

In the presence of:

.....Both accused

Munyendo holding brief for Imbenzi ...for 1st accused

Akwala Holding brief Ondiekifor 2nd accused.

Ng'etichfor state

George.....Court Assistant