



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MAKUENI**

**HCCR. NO. 54 OF 2017**

**REPUBLIC.....APPELLANT**

**-VERSUS-**

**HENRY KASYOKI NDUNDA.....RESPONDENT**

**RULING**

**INTRODUCTION**

1. This case is for ruling on whether the accused has a case to answer after prosecution closed its case having called (8) eight prosecution witnesses.
2. In the case of **Bhate –Vs- Republic EALR 1957 P.332** on page 3, the court held that;  
  

***“The onus is on prosecution to prove its case beyond reasonable doubt and prima facie case is not made out if, at the close of prosecution case, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence.”***
3. In the instant case the accused faces a charge of murder contrary to Section 203 as read with Section 204 Cap 63 Penal code.
4. Particulars being that between 16/09/2008, and 10/10/2008 at Kithangaini village Ikalyoni Sub-location, Makueni district, Eastern Province murdered Sammy Maithya Ndunda.
5. The accused pleaded not guilty and matter went to full trial.
6. The prosecution called eight witnesses including the investigating officer, Doctor and scene of the crime officer who produced photographs.
7. PW1 narrated how the accused showed them in presence of chief the place he had buried his brother deceased herein after he killed him.
8. This was corroborated by PW2 who was local chief. Also PW4 witnessed the same.
9. PW5 was a doctor who observed on a skull of the recovered decomposed body of the deceased.
10. PW6 heard accused say that he killed the deceased.
11. PW7 was the investigating officer. He supervised the exhumation of the deceased body where accused showed he had buried him. PW7 took cautionary statement in which the accused admitted killing his brother and buried him.
12. PW8 was scene officer who produced photographs in which the recovered body and scene of burial was captured *inter alia*.
13. Both the prosecution and defense did not submit at this stage but relied on the evidence on record.
14. After going through the evidences on record, I find there is overwhelming evidence in establishment of a *prima facie* case which requires the accused to be put on his defense.

15. Thus the court orders that the accused to be put on his defence.

**SIGNED, DATED AND DELIVERED THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2018, IN OPEN COURT.**

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**C. KARIUKI**

**JUDGE**