



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 40 OF 2012**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**FRED MASAKI FEDA.....ACCUSED**

**RULING**

1. The accused is charged with *murder* contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars are that on the 28<sup>th</sup> May 2012, at Uswa village, Kaplolo Location, Moiben Division, Uasin Gishu District of the Rift Valley Province, he murdered *Moses Kiza Khisa*.
3. He pleaded *not guilty*. The prosecution called *six* witnesses. I have considered the *circumstantial* evidence surrounding the homicide. I am alive that no *eye witness* came forward. Nevertheless, I have paid close attention to the evidence of PW3, PW4, PW5 and PW6. I have also considered the submissions by the learned prosecution counsel filed on 9<sup>th</sup> February 2017; and, those by the learned defence counsel filed on 13<sup>th</sup> February 2017.
4. On the summation of the evidence of the *six* witnesses; and, in particular that of *PW6*, I am persuaded that the Republic has established a *prima facie* case against the accused. See *Bhatt v Republic* [1957] E.A. 332, *R v Kipkering arap Koske & another* 16 EACA 135 (1949).
5. Accordingly, under the provisions of section 306 (2) of the Criminal Procedure Code, I put the accused on his *defence*.

It is so ordered.

**DATED, SIGNED and DELIVERED at ELDORET this 28<sup>th</sup> day of February 2017.**

**KANYI KIMONDO**

**JUDGE**

**Ruling read in open court in the presence of-**

Accused.

Ms. Tigoi holding brief for Mrs. Lagat for the accused.

Mrs. Chelashaw holding brief for Ms. Oduor for the Republic.

Mr. J. Kemboi, Court Clerk.