



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CRIMINAL DIVISION
CRIMINAL (MURDER) CASE NO. 15 OF 2013
REPUBLIC.....PROSECUTOR
VERSUS
JAMES OJWANG ALICHO.....1ST ACCUSED
EZEKIEL AKHERE ANDAYI.....2ND ACCUSED

RULING

Introduction

1. In the consolidated information dated 10th December, 2013 the two accused persons are charged, with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars being that on the night of 3rd and 4th day of March, 2013 at [an] unknown time in ESHIRANDA VILLAGE, KISA NORTH location, Khwisero District within Kakamega County Jointly with others not before Court, murdered LIVINGSTON AMBOLOLA SHILEBO. They denied committing the offence.

The Prosecution Case

2. The prosecution called six witnesses in its effort to prove the charge of murder against the accused persons. Neither the doctor nor the investigating officer testified. one of the witnesses Nicodymus Ongweni Manani who testified as PW6, told the court that the deceased gave him the names of the accused persons as being among those who assaulted him (Deceased)

Analysis and Determination

3. After carefully considering the evidence of all 6 prosecution witnesses the issue that arises is whether there is evidence on record which establishes a prima facie case requiring the two accused persons to be put on their defence.

4. A prima facie case was defined by the Court of Appeal for East African in the case of **Bhatt – Vs- R[1957] 332**. At this point in time, the prosecution does not have to prove a case beyond any reasonable doubt. It is to be noted however, that no amount of worthless or discredited evidence will establish a prima facie case.

5. Applying the above principles to the instant case, and balancing the scales between a case proved reasonable doubt and one that is based on worthless and discredited evidence, I am satisfied that the prosecution in this case has established a prima facie requiring the accused persons to be put on their defence. This is despite the fact that neither the doctor who conducted the post mortem examination nor the investigating officer were called to testify.

6. Having reached the conclusion that the prosecution has established a prima facie case against the two accused persons, I now put them on their defence. They may give sworn or unsworn, evidence. If they give it either of them, give sworn evidence, they may be asked questions both by the court and the prosecution. If they give unsworn evidence, no one is allowed to ask them questions. In each case, they are at liberty to call witnesses.

7. Finally, they may choose to remain silent and let the court decide the case on the strength of the evidence that is on record. They may now indicate to the court how they intend to conduct their defence.

Orders accordingly.

Ruling delivered, dated and signed in open court this 29th day of June 2017

RUTH N. SITATI

JUDGE

In the presence of;-

.....Mr. Juma Ochieng (present).....for state

.....Mr. Atulo (present).....for Accused

.....Polycap.....court Assistant.