

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 62 OF 2013

REPUBLIC PROSECUTOR

VERSUS

PATRICK KYALO MUNYWA.....1ST ACCUSED

LAWRENCE MULWA MUNYWA 2ND ACCUSED

RULING OF THE COURT

1. Both accused persons herein **PATRICK KYALO MUNYWA** and **LAWRENCE MULWA MUNYWA** are charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code (CAP 63) Laws of Kenya. The particulars of the offence are that on the 28th November, 2013 at Katheka-Kai village in Machakos District within Machakos County, jointly with others not before the Court murdered **JOEL MUTUNGA MUINDU**.

2. The Prosecution's case is that on the material date the deceased was picked up by the fellow villagers who included the accused herein on allegation that he had stolen a cow belonging to the family of the accused persons. The deceased was beaten for the better part of the night before being handed over to Machakos Police Station from where he was rushed to Kenyatta National Hospital but was pronounced dead at the hospital's casualty Section. A post mortem was later conducted on the body and the Pathologist formed the opinion that the cause of death was head injury due to blunt force trauma. The accused persons herein were subsequently arrested.

3. The Prosecution called seven (7) witnesses in support of its case. Both learned counsels for Prosecution and defence opted not to make submissions at the close of the Prosecution's case.

4. At this stage of the proceedings the Prosecution is under a duty to establish a prima facie case against the accused persons so as to require them to make their defence. According to the celebrated case of **BHAT =VS= REPUBLIC [1957] EA 332** a prima facie case is one in which a reasonable tribunal directing its mind to the law and evidence is adduced by the defence to the contrary. Therefore the evidence adduced on the part of the Prosecution must be sufficient to sustain a conviction against the accused persons if they are to elect to remain silent in defence.

5. Looking at the evidence of the 7 Prosecution witnesses, I am satisfied that a prima facie case has been established to require the accused to be placed on their defence and be called to conduct their defence in accordance with Section 306(2) of the Criminal Procedure Code. Hence I find both accused persons have a case to answer.

Dated, signed and delivered at **MACHAKOS** this **27th** day of **JULY**, 2017.

D. K. KEMEI

JUDGE

In the presence of:-

Ayuma for Ngolya for accused

Machogu for state

C/A: Kituva