

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 78 OF 2010

REPUBLIC**PROSECUTOR**

VERSUS

R M M.....ACCUSED

RULING OF THE COURT

1. **RMM** herein is charged with an offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 29th day of November, 2010 in Matuu Location, Yatta District within Masaku County murdered **NDUNGE IVONGO**.

2. The Prosecution's case is that on the material date at around 6.45 p.m. the accused herein who had been suffering from some mental illness since 2008 went on the rampage and killed a she goat and damaged a roof and also fatally wounded the deceased who happens to be his own grandmother with whom he resided in the same house. The villagers managed to subdue the accused and handed him over to the Community Policing Personnel who in turn handed him over to the police. The body of the deceased was later collected by the police and taken to Matuu Nursing Home where a post mortem was conducted by Dr. Muli Simon Kioko. According to the said doctor the weapon used to inflict injuries on the deceased was a blunt object and he further formed the opinion that the cause of death was severe brain contusions due to blunt head trauma. The accused underwent some treatment for quite some time until the doctors finally certified that he was fit to plead to the charges.

3. The Prosecution called six (6) witnesses in support of its case. Both learned counsels for the accused and the state 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 person so as to require him to be compelled to conduct his defence. A prima facie case is one in which a reasonable tribunal directing its mind to the law and evidence placed before it can convict an accused person if no evidence is adduced by the defence to the contrary (see **BHAT =VS= REPUBLIC [1957] EA 332**). Hence the evidence so far presented on the part of the Prosecution must be sufficient to sustain a conviction against the accused were he to elect to remain silent in defence.

5. Looking at the evidence adduced by the six (6) Prosecution's witnesses, I am satisfied that a prima facie case has been established to require the accused to be placed on his defence and be called to conduct his defence in accordance with Section 306(2) of the Criminal Procedure Code. Hence I find the accused has a case to answer.

Dated, signed and delivered in court at **MACHAKOS** this 27TH day of **JULY** 2017.

D. K. KEMEI

JUDGE

In the presence of:-

Ayuma for Muema for Accused

Machogu for State

C/A: Kituva