



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 3 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JUSTUS LETUNAI LETIALO.....1<sup>st</sup> ACCUSED**

**SILETI PORSHORIO.....2<sup>nd</sup> ACCUSED**

**RULING**

1. **JUSTUS LETUNAI LETIALO** (1<sup>st</sup> accused) and **SILETI PORSHORIO** (2<sup>nd</sup> accused) in this case faced two charges of murder. On **count 1** they were both charged with murder of Stephen Akwalu M'thuraniira deceased, and on the **count 2** they were charged with the murder of Simon Karuthi M'Kanake deceased. They pleaded not guilty on both counts.

2. The prosecution called a total of twelve witnesses before closing its case. As provided under **Section 306 of the Criminal Procedure Code Cap 75**, the court, at this stage, is obligated to Rule on whether there is on prima facie basis evidence that the accused committed the offences of murder. If indeed the prosecution has not shown on prima facie basis that the accused committed the offences of murder this court must, as provided under **Section 306 (1) of Cap 75** enter a not guilty verdict against them. Justice S. N. Mutuku in the case **REPUBLIC - V- BERNARD OBUNGA [2015] eKLR** had occasion to consider what constitutes prima facie. She stated in that case thus: What constitutes a prima facie is clearly stated in **RAMANLAL TRAMBAKLAL BHATT V. REPUBLIC [1957] E. A. 332 at 334 and 335**, where the court stated as follows:

*“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one” which on full consideration might possibly be thought sufficient to sustain a conviction”. This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence”. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence..... It may not be easy to define what is meant by a “prima facie case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence” (emphasis mine). See also *Wibiro alias Musa v. R (1960) E A 184*.*

The Black's law Dictionary defines `prima facie case as:

***“The establishment of a legally required rebuttal presumption”.***

3. The background that led to the death of Akwalu deceased and Kanake deceased is the now too frequent conflict in Kenya in general and Laikipia County in particular for fodder for the livestock. On 20<sup>th</sup> 2015 Michael Erumu Erupe (**P W 3**), Jotham Ntongai Kiambai (**P W 4**) and Kadogo (who did not testify) were at Mogwoon Ranch undertaking their routine job of patrolling the said ranch. At around 2p.m. they saw 7 small goats in the ranch but which did not belong to the ranch. They chased those goats out of the perimeter fence and as they did so the two accused persons, who P W 3 referred to as Moraans armed with Maasai swords, club (rungu) and stone, began to chase them. As they did so more people from the accused’s community joined the chase. It was then Kadogo fired a shot, from his gun, in the air to scare them. P W 3, P W 4 and Kadogo managed to escape from the people chasing them. P W 3 knew the two accused who first chased them by name and was able to point each one, naming them, as they sat in the dock. P W 4 recognised the two accused as the Moraans who first chased them but did not know their name. Both P W 3 and P W 4 confirmed that both accused reside in the neighbourhood of Mogwoon Ranch.

4. On the same day at 8p.m. while workers of Mogwoon ranch were busy preparing their dinner in their respective houses, within the said Ranch, they heard a group of more than 20 people throwing stones on their houses, houses that were made of aluminium sheets. They said there was a terrible commotion outside. Patrick Mbaabu M’lchokera (**P W 1**) said that on hearing that commotion he peeped outside through his door and heard some people say **“toka toka”** (come out, come out). One of those people ripped open the aluminium sheets of his house and hit him on his back three times. P W 1 fell and then hid beneath his bed. The group of people pulled the late Kanake from P W1’s house.

P W 1 could hear the late Kanake being assaulted by the group of people.

5. Stephen Mberia M’Ithira (**P W 2**) while at his house within Mogwoon Ranch at about 8p.m. heard noise which was a club (rungu) hitting the aluminium sheets of his house. The group of people outside were also hitting other houses of other workers. P W 2 got out of his house very quickly and went to hide.

6. Japhet Marete Mwetii (**P W 5**) on the same night while in his house at Mogwoon Ranch heard a lot of noise outside. There were people outside who were throwing stones onto their houses. According to

P W 5 the people outside were many. P W 5 ran out of his house. He was followed by one of those people who hit him with a ‘rungu’ on his leg. P W 5 however was able to get away and hide.

7. Domisiano Mworira Rimbitu (**P W 7**) is the Ranch Manager of Mogwoon Ranch. He confirmed the incident that occurred during the day when

P W 3, P W 4 and Kadogo chased away 7 goats from the Mogwoon Ranch and they were in turn chased by Moraans and other persons. He stated that on that night at Mogwoon Ranch in a ‘Boma’ called Mlango moja there was an attack of the employees. On reaching that ‘boma’ he found one employee already dead. That was the late Kanake. P W 7 could hear other employees crying in pain in the bush. He organised for those who were injured to be taken to hospital. Amongst the injured was the late Akwalu. The late Akwalu later succumbed to his injuries and died.

8. Although P W 7 and the investigating officer of the case stated that Kadogo informed them that he identified both accused at the scene of the attack, Kadogo did not testify. Indeed prosecution informed the court that Kadogo went underground and could not be traced by the police.

9. It is pertinent to state that all the witnesses who were at the scene of the attack and who testified before court stated that they did not identify any of the attackers. In other words there was no evidence tendered, tenuous or otherwise, which placed the two accused at the scene of the attack where the two murders were committed. The only connection between the two accused and Mogwoon Ranch was the incident that occurred earlier in the day when the goats, which were grazing in Mogwoon Ranch, were chased away by P W 3, P W 4 and Kadogo. That chase of the goats caused the two accused and people from their

community to chase P W 3, P W 4 and Kadogo. The prosecution's case, as I understand it, is that the two accused having chased the Mogwoon Ranch employees were presumed to be in the group that later attacked the employees in their houses later that night . That is circumstantial evidence at its weakest.

10. I am aware that at this stage all that the prosecution is required to establish is a prima facie case. In my consideration of the evidence adduced by the prosecution I find that the prosecution has not established a rebuttal presumption that the accused committed the offences of murder. No prima facie case has been shown. **It is because of that finding that I do enter a verdict of not guilty as per section 306 (1) of the Criminal Procedure Code and do acquit JUSTUS LETUNA LETIALO and SILETI PORSHORIO of the charges of murder. I order that they be set free from custody unless they are otherwise lawfully held.**

**Dated and Delivered at Nanyuki this 2<sup>nd</sup> August 2017**

**MARY KASANGO**

**JUDGE**

**Coram**

Before Justice Mary Kasango

Court Assistant: Njue

Justus Letunai Letialo: 1<sup>st</sup> Accused

Sileti Porshorio: 2<sup>nd</sup> Accused

For both accused .....

For state: .....

Language .....

**COURT**

Ruling delivered in open court

**MARY KASANGO**

**JUDGE**