



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL DIVISION

CRIMINAL CASE NO. 9 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

FREDRICK INDECHE ASAMANI.....1ST ACCUSED

ALFRED BUTICHI MBEHELO.....2ND ACCUSED

R U L I N G

1. Fredrick Indeché Asamani and Alfred Butichi Mbehelo are jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars being that on the 16th day of February, 2014 at Shirumba Location in Kakamega South District within Kakamega County, jointly with others not before court, murdered FRANCIS SHIONO SHIROKO. They pleaded not guilty to the charge when they appeared before Hon. Mr. Justice Dulu on 7th April, 2014.

2. The prosecution called 8 witnesses. Sheila Nasiswa, a daughter of the deceased was PW1 while Patrick Mukokho Ashiono was PW2. Josephat Kwayela Mbalasi was PW3 Emmah Khasungu Ashiono was PW4 while Bonfasi liuba libuli and Elizabeth waithira Onyiengo a Government Analyst testified as PW5 and PW6 respectively. Number 92263 PC (w) Rosemary Bor of Kakamega Police Station and Dr. Dixon Mchana testified as PW7 and PW8 in that order.

3. From the testimonies of the 8 prosecution witnesses, the deceased was attacked by 4 people among them the 2 accused persons who cut him on the head and on the face on the left side of the cheek below the eye with a flap fracture of cheek bone. According to the evidence by Dr. Mchana there was bleeding both above and below the covers of the brain and into the brain. Dr. Mchana opined that the cause of death was penetrating head injury secondary to sharp trauma following assault. The post mortem report was produced as PExhibit 10. The mental assessment reports on the two accused persons were produced as PExhibit 11(a) and 11(b) respectively.

4. At the close of the prosecution case counsel for the two accused persons did not make any submission on whether the accused persons have a case to answer although in Mr. Onsando's view there is no sufficient evidence on record to warrant putting the 1st accused on his defence.

5. I have now carefully considered the evidence on record. I have also considered the provisions of the law as set out under Sections 203 and 206 of the Penal Code. I have also looked at the definition of prima facie case in BLACK'S LAW DICTIONARY. There is also the case of Bhatt- vs- R [1957] EA 332 which sets out the principles to be applied by courts in determining what amounts to a prima facie case.

A prima facie case is not one that is proved beyond reasonable doubt. It is a case which upon careful scrutiny by the trial court a conviction could result if the accused person says nothing.

6. Applying the above stated principles to this case, I am satisfied that the prosecution has established a prima facie case requiring each of the 2 accused persons to be put on their defence and I proceed to do so. The accused are at liberty to choose one of three options in defending themselves. The first option is to testify on oath and be asked questions by both the court and the prosecution. The second option is to give unsworn evidence and in that case no questions will be put to them. In both instances, each accused has a right to call witnesses. Finally, the accused persons can elect to remain silent and let the court decide the case on the evidence that is before it.

7. I now call upon each accused to indicate to the court how they intend to proceed with their defence.

It is so ordered.

Ruling delivered, dated and signed in open court at Kakamega this 19th day of September, 2017

RUTH N. SITATI

JUDGE

In the presence of;-

Mr. Juma Ochieng.....for state

Mr. Nyikuli h/b for Mr. Onsando.....for 1st accused

Mr. Nyikuli.....for 2nd accused

Mr. Polycap.....Court Assistant