



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA ATKAKAMEGA**

**CRIMINAL DIVISION**

**CRIMINAL CASE NO. 14 OF 2012**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**RICHARD TANDASI ANYULA .....ACCUSED**

**RULING**

1. The accused herein, Richard Tandasi Anyula is 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 10<sup>th</sup> day of March, 2012 at Shidodo Location in Kakamega East District within Western Province with others not before court murdered Benson Musava.

2. When the accused appeared for plea on 2<sup>nd</sup> May, 2012, he pleaded not guilty; forcing the prosecution to call 8 witnesses in an attempt to prove the charge against the accused. PW1 was Wilson Tom, the Assistant Chief, Shidodo Sub-Location while Jackline Muhonja was PW2. Collins Chitavoi testified as PW3 while PW4 was Meble Mwangani who is wife to Collins PW3. Alex Kitavi and Kevin Ikutu testified as PW5 and PW6 respectively while number 83213 Police Constable Abdudek Sharif Molud was PW7 Dr. Dixon Mchana Waludindi testified as PW8. From all the 8 prosecution witnesses, it is only PW6 (Kevin) who testified that he saw the accused and others assaulting the deceased, on allegations that he (deceased) had stolen the accused's polythene papers for covering bricks. Dr. Mchana who produced the post mortem report prepared by Dr. Milka Olando who conducted the post-mortem examination, testified that the deceased's body was about 5' 3" long and that it had non-extensive cuts on the left half of chest, both upper limbs and the entire back with huge blood clots underneath the bruises.

3. Internally the body had a clot underlying the 8<sup>th</sup> and 9<sup>th</sup> ribs, injury of the left kidney. According to the medical evidence, the cause of death was shock following physical trauma. The post mortem report was produced as PExhibit 1 with Dr. Mchana's evidence, the prosecution closed its case.

4. At the close of the prosecution case, Miss Andia, Counsel for the accused left the court to make a decision on whether or not the accused has a case to answer, hence this ruling.

5. After carefully considering the evidence that is on record and applying the principles set out in the case of **Bhatt – vs – R [1957] EA 332** further considering the law as set out under Section 203 and 206 of the penal code, I am satisfied that the prosecution has established a prima facie case requiring the accused to be put on his defence. Accordingly, the accused is called upon to defend himself by either giving sworn evidence and subject himself to cross examination or give an unsworn statement after which he will not be asked any questions. If the accused so elects, he may choose to remain silent and let the court decide the case on the evidence that is before it. If the accused chooses to give sworn or unsworn evidence, he has a right to call witnesses.

6. The accused may now indicate how he intends to proceed with his defence.

Orders accordingly.

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

**RUTH N. SITATI**

**JUDGE**

In the presence of:

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

Mr. Ondieki H/B for Miss Andia.....for the Accused

Polycap Mukabwa.....Court Assistant.