



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CRIMINAL DIVISION
CRIMINAL (MURDER) CASE NO. 11 OF 2014
REPUBLIC.....PROSECUTOR
VERSUS
SIMON MSEE NANDI.....1ST ACCUSED
JOSEPHINE MSEE LIPALI.....2ND ACCUSED

R U L I N G

Introduction

1. The two accused, Simon Msee and Josephine Msee Lihapi are charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 25th February, 2014 at EMUKOYANI Village in Kakamega Central District within Kakamega County, murdered VINCENT MSEE SHIKOLI. On the 13th March, 2014, they each pleaded not guilty to the charge. As a result of that plea, the case has been ongoing since then.

The Prosecution Case

2. The prosecution called 6 witnesses among them Tom Martin Mbaya, PW1 and his wife Janepher Nderi who testified as PW2, PW1 stated that as he got home from his boda boda business he found the two accused assaulting deceased allegedly for troubling them whenever he was drunk. Clement Mashisia , PW3 assisted in taking the deceased to hospital and it was while he was at hospital that the deceased died on 25.02.2014 while the two accused persons were arrested on 26.02.2014. Alex Mutende Oremo, Assistant Chief of Shirakaru Sub-Location testified as PW4 while Dr. Dixon Mchana testified as PW5. He did so on behalf of Dr. Peter Asava who had since resigned from the Ministry and found Maseno University. The cause of death was said to be closed hear injury secondary to a fall. Number 69947, CPL David Sugut testified as PW6. He also investigated this case.

Analysis and Determination

3. This ruling is to determine whether or not the accused persons have a case to answer. After carefully considering the evidence on record together with the submissions made, I am satisfied that accused persons have a case to answer concerning the death of the deceased Msee Shikoli. I am satisfied that the evidence on record meets the threshold for a prima face case.

4. In this regard, they are each placed on their defence. Accused may give evidence on oath and be ready for cross examination or give unsworn evidence and have no questions put to him. In either case, the accused has a right to call witnesses. Thirdly the accused may choose to remain silent and let the court decide the case on the evidence that is before it. This now the time for each accused to indicate to court how they intend to proceed with their defence.

Orders accordingly

Ruling dated, delivered and signed in open court today at Kakamega this 13th day of October, 2017

RUTH N. SITATI

JUDGE

In the presence of;-

...Mr. Ngetich(present).....for State

...Mr. Amasakha for Matete.....for Both Accused

.....Polycap.....Court Assistant