

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO.4 OF 2013

REPUBLIC.....PROSECUTOR

AND

KEVIN SHAMAN ANDOLEACCUSED

RULING

Introduction

1. The accused person herein, Kevin Shaman Andole 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 12th day of January 2013, at Muyala village, Indangalasia sub location in Kakamega Central district within Western province he unlawfully murdered Ann Adhiambo Nambala. The accused pleaded not guilty to the charge when he appeared for plea on 5th February 2013. Thereafter, the Prosecution called 11 witnesses.
2. At the close of the Prosecution case defence Counsel Mr. Amasakha through Miss Mukolwe asked for 2 weeks to put in written submissions on whether or not the accused person had a case to answer. That was on 26th October 2015. The case was then fixed for mention on 23rd November 2015, but on that day, Mr. Khayumbi holding brief for Mr. Amasakha Advocate, informed the Court that Mr. Amasakha did not wish to file any written submissions. Counsel asked for a judgment date. Mr. Omwenga, learned Counsel for the State concurred with Mr. Khayumbi in asking for a judgment date though Counsel should have asked for a ruling date since the accused is yet to testify.
3. I have carefully considered the evidence of the 11 Prosecution witnesses in this case and I am satisfied that the Prosecution has established a prima facie case requiring the accused person to be put on his defence. In this regard, I am guided by the principles set out by the Court of Appeal for Eastern Africa in the case of **Bhatt –vs- R [1957] EA 332**.
4. Consequently and pursuant to Section 306(2) of the Criminal Procedure Code, I now put the accused on his defence in respect of the allegations that on 12th January 2013 at Mwiya village, he murdered Ann Adhiambo Nambala. The accused may give sworn or unsworn evidence. In the former case, both the State and the Court may ask him questions after he testifies. If he gives unsworn evidence nobody will ask him any questions. The accused person is also free to remain silent and let the Court decide the case on the evidence that is before it. In each case, the accused person has a right to call witnesses. The accused may now proceed and let the Court know how he intends to defend himself.
5. Orders accordingly.

Ruling delivered, dated and signed in open Court there at Kakamega this 25th day of February 2016.

RUTH N. SITATI

J U D G E

Mr. Omwenga (present) for State

Miss Wilunda for M/s Mukolwe (present) for Accused

Mr. Lagat - Court Assistant