



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL CASE NO. 69 OF 2012

REPUBLIC.....PROSECUTOR

VS

STANLEY MUTUMA M'IMANA.....1ST ACCUSED
GITONGA MATHAYO ALIAS G K ALIAS MUTISYA...2ND ACCUSED
SAMSON MICHUBU KANYANA.....3RD ACCUSED
CHARLES NTONJA M'NTHAKA.....4TH ACCUSED
JOSEPH GITONGA ALIAS KATO.....5TH ACCUSED
LAWI KAMENCHU M'NTHAKA.....6TH ACCUSED
SAMUEL GITONGA ZAKAYO.....7TH ACCUSED
JOSEPH KARIUKI KIRINGO ALIAS MUCHANGI.....8TH ACCUSED

RULING

The eight accused persons namely, **Stanley Mutuma M'Imana, Gitonga Mathayo Alias G K Alias Mutisya, Samson Michubu Kanyana, Charles Ntonja M'nthaka, Joseph Gitonga Alias Kato, Lawi Kamenchu M'Nthaka, Samuel Gitonga Zakayo, Joseph Kariuki Kiringo Alias Muchangi.** (Accused 1-8) were charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

They are alleged to have murdered Isaack Kalunge Gerald on the night of 2/10/2012 at Kathelwa village. The prosecution closed its case after calling a total of 8 witnesses. At this stage, the court has to determine whether or not the prosecution has established a prima facie case against the 8 accused persons to warrant them to be placed on their defence.

A prima facie case has been defined to be 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. See **Bhatt vs Republic 1957 EA 332.**

PW1 **Gladies Kanario Manyara**, PW2 **Joel Murungi Zakayo**, who were present at the scene of the murder and PW4 **Tony Manyara** who arrived at the scene soon after the murder of the deceased denied

seeing accused 4 Charles Ntonja and Accused 8 Joseph Kariuki Kiringo at the scene.

Although the accused 4 and 8 were mentioned as having had issues arising from land disputes with the deceased before his death, none of the prosecution witnesses placed accused 4 and 8 at the scene nor did any witness tell the court what role accused 4 and 8 played in the murder.

For these reasons, I find no good reason to place the two accused on their defence and they are hereby acquitted under Section 306 (1) of the Criminal Procedure Code. However, accused 1,2,3,5, 6 and 7 are hereby called upon to defend themselves.

DATED, SIGNED AND DELIVERED THIS 23rd DAY OF JUNE, 2016.

R.P.V. WENDOH

JUDGE

Before

Mr Mulochi for the state

Mrs Ntarangwi for accseud1

Mr Igweta for 2nd and 4th accused

Mr Igweta holding brief for Mr Otieno for Accused 3,5,6,7,and 8.

C.A Penina