

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

HIGH COURT CRIMINAL CASE NO.37 OF 2013

REPUBLIC PROSECUTOR

VERSUS

VINCENT MAKHAKASIA MUFOYONGO ACCUSED

RULING

1.The accused, *Vincent Makhasia Mafoyongo*, was arraigned before this court on the information of murder contrary to *section 203* as read with *section 204* of the Penal code. Particulars were that on the 23rd July, 2013 at Mundulu Village, Shidodo Sub-location, Khayega Location of Kakamega East District within Kakamega County, murdered *Atanas Mufoyongo Matayo*.

2. The prosecution called 5 witnesses in this trial. PW1, widow to the deceased and mother to the accused told the court that she left home and went to the market to buy sugar but on returning she found the deceased having been assaulted by the accused over some dispute which she attributed to food.

PW2 was informed that the accused had attacked his father. PW3 is the doctor who conducted an autopsy on the body of the deceased on 26th July, 2013 at Kakamega Provincial General Hospital. The body had injuries at the back of left hand, a cut wound on the side of the left hand and a cut wound on the left forehead. There was bleeding in the head (skull) below the skin with swollen brain and fracture of the femur. He formed the opinion that the cause of death was pressure in the brain secondary to mixed force trauma following assault.

3. PW4 was informed of her father's death and proceeded to their home where she confirmed that indeed her father was dead, while PW5 is the investigating officer who went to the scene where they re-arrested the accused and took the body to the mortuary.

4. There is evidence especially that of PW1 that it was the accused who assaulted the deceased. Then evidence of PW3, the doctor is consistent with the evidence of assault since the cause of death was due to trauma following assault. From that evidence, I find that the prosecution has made out a *prima facie* case to require the accused to defend himself. For that reason I find that there is sufficient evidence to put the accused on his defence and I proceed to do so.

Dated and delivered at Kakamega this 20th day of September, 2016.

E.C. MWITA

JUDGE