

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

HIGH COURT CRIMINAL CASE NO.47 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

MARK LUKOYE MASAMBAYA

SIMON AKHALUMI MASAMBAYA.....RESPONDENT

RULING

1. The accused *Marck Lukoye Masambaya* and *Simon Akhalumi Maambaya* have been arraigned before court on the information of murder contrary to *section 203* as read with *section 204* of the Penal Code. Particulars are that on the 13th July, 2011 at *Shikomari Sub-location* in *Kakamega Central District* within Western Province jointly murdered *Robert Shisia Masambaya*.

2. The prosecution has called 6 witnesses. I have considered the evidence on record especially the evidence of PW1 and PW2 who saw the deceased before his death and took him to hospital. They spoke to him and according to their evidence, he told them what had happened. PW3 also told the court that the accused went to the station with some items which belonged to the deceased and reported that the deceased had attacked them. The witness observed the cloths they were wearing which had blood stains. The accused were the last people who were with the deceased while he was alive.

3. PW4 also testified how he saw the deceased in hospital injured and talked to him and that the deceased told him that it was the accused who had attacked him. The evidence of the Doctor, PW6, is clear that the injuries on the body of the deceased were consistent with an assault.

4. From the evidence on record, I am satisfied that the prosecution has established a *prima facie* case against the accused person to warrant them being put on their defence. Consequently I proceed to put the accused on their defence.

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

E.C. MWITA

JUDGE