

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KITUI

CRIMINAL CASE NO. 40 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

MUSEMBI NZIOKI.....1ST ACCUSED

FESTUS MUTUA NZIOKI.....2ND ACCUSED

R U L I N G

1. Musembi Nzioki and Festus Mutua Nzioki hereinafter, the 1st and 2nd Accused respectively are charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code (Cap. 63), Laws of Kenya**. Particulars of the offence are that on the **21st day of June, 2014** at **Matithini Village, Kyanika Location** in **Nzambani District** within **Kitui County**, jointly with others not before court, murdered **Shadrack Kasee Nzioki** (Deceased).

2. The Deceased herein was assaulted. A report was made to the police who visited the scene and took him to **Kenyatta National Hospital** for treatment. He died while undergoing treatment. A postmortem was conducted on his body by PW5 **Doctor Andrew Kanyi Gachie** who formed the opinion that the cause of death was a head injury due to blunt force trauma.

3. PW1 **Elijah Kitemi** and PW2 **Josephine Jane Kiteme** went to the scene of the incident, the **Matithini African Inland Church** on being woken up by one **Naomi Musembi**. They found persons they identified as the two (2) Accuseds herein in the act of assaulting the Deceased.

4. At this stage the court is duty bound to determine if indeed a *prima facie* case has been established requiring the Accused persons being put on their defence. A *prima facie* case was defined in the case of **Ramanlal T. Bhatt vs. Republic (1957) EA 332** as:

“.....one on which a reasonable tribunal properly directing its mind to the law and evidence could convict if no explanation is offered by the defece.”

5. In the case of **Republic vs. Jagjivan M. Patel and Others 1 TLR 85** the court stated thus in regard to whether a *prima facie* case is established:

“All the court has to decide at the close of evidence of the charge is whether a case is made out against the accused just sufficiently to require him to make his defence. It may be a strong case or it may be a weak case. The court is not required at this stage to apply its mind in deciding finally whether the evidence is worthy of credit or whether, if it is believed, it is weighing enough to prove the case conclusively beyond reasonable doubt. A ruling that there is a case to answer would be justified, in my opinion, in a borderline case where the court, though not satisfied as to the conclusiveness of the prosecution evidence, is yet of the opinion that the case made out is one which on full consideration might possibly be thought to sustain a conviction.”

6. In the instant case, the Accused persons were relatives of PW1 and PW3. They engaged in a conversation on the material night. There were security lights at the church that aided them in

identification purposes. It is a case where a *prima facie* case has been established that requires the Accused persons to defend themselves pursuant to the provision of **Section 306(2)** of the **Criminal Procedure Code**.

7. It is so ordered.

Dated, Signed and Delivered at Kitui this 15th day of December, 2016.

L. N. MUTENDE

JUDGE