



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL CASE NO. 62 OF 2011

REPUBLIC..... PROSECUTOR

VERSUS

REUBEN MULONGO NYONGESA.....1ST ACCUSED

JOSEPH MAHERA KIPLIMO.....2ND ACCUSED

AMOS WEKESA SIMIYU.....3RD ACCUSED

BENSON BARASA WANJALA.....4TH ACCUSED

MOSES WEKESA MATETE..... 5TH ACCUSED

RULING

1.The charge facing the five accused ie **Reuben Mulongo Nyongesa** (first accused), **Joseph Mahera Kiplimo** (second accused), **Amos Wekesa Simiyu** (third accused), **Benson Barasa Wanjala** (fourth accused) and **Moses Wekesa Matete** (fifth accused), is that of Murder, contrary to Section 203 read with Section 204 of the penal code, in that on the night of **5th December, 2011** at Mbai Farm Kiminini Village Trans-Nzoia County, murdered **Peter Kiprotich**.

2. At the close of the prosecution case, it was required that a “*prima facie*” case be established to warrant that the accused be placed on their defence. Such a case is one in which a reasonable court properly directing its mind to the law and the evidence before it could convict if no explanation is offered by the defence. Thus the evidence adduced by the prosecution must not only be credible but also sufficient enough to establish the material ingredients of any one charge facing an accused person. A scintilla of evidence nor any amount of worthless discredited evidence can never be sufficient in establishing a “*prima facie*” case.

3. Herein, the evidence by the six prosecution witnesses (PW1-6) has strongly indicated that the deceased was murdered as his dead body was found with a deep cut wound to the head and face and having been thrown into a well or borehole near his house. The murder weapon was suspected to be an axe.

In the course of the police investigations, some items said or suspected to belong to the deceased were found with the first accused and on his arrest he implicated the second, third, fourth and fifth accused all of whom were also arrested. Ultimately, the five accused were charged with the present offence.

4. In the opinion of this court, whereas the evidence against the first accused is sufficient for purposes of calling upon him to make a defence, the same position does not apply to the second, third, fourth and fifth

accused. This is because they (accused two, three, four and five) were mentioned and arrested at the instigation of the first accused but no independent corroborative evidence was provided herein by the prosecution to link them to the offence. In the circumstances, calling upon them to make their defence would be tantamount to asking them to fill the gaps left wide open by the prosecution.

5. In the upshot, the court must find and hereby finds that the first accused has a case to answer but not the second, third, fourth and fifth accused who are hereby acquitted and set at liberty forthwith unless otherwise lawfully held.

Ordered accordingly.

J.R. KARANJA

JUDGE

28/7/2015

[Read and signed this 28th day of July, 2015]

J.R. KARANJA

JUDGE

28/7/2015