



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL (MURDER) CASE NO. 15 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

TITUS STEPHEN MUHUNYI.....ACCUSED

RULING

1. The accused person herein, Titus Stephen Muhunyi is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the night of 30th March, 2012 at Mwikalikhha Village, Central Bunyore Location in Emuhaya District within the county of Vihiga jointly with others not before court, unlawfully murdered BENSON MWANGU ALIONGU. The accused denied the charge and the case has been going on since 29/05/2012.2.

2. The prosecution called 8 witnesses among them Dr. Dixon Mchana who produced the post mortem report on behalf of Dr. Charles Muturi who did the post mortem examination on the body of the deceased. According to the post mortem report, the deceased due to severe head injury occasioned by blunt force trauma.

3. At the close of the prosecution case, Nr. Nyikuli counsel for the accused submitted that the prosecution had not established a prima facie case against the accused person to warrant the accused person being put on his defence. He asked for acquittal of the accused at this stage. Mr. Oroni

Counsel for the accused however submitted that from the evidence of the 8 prosecution witnesses the prosecution has established a prima facie case that requires the accused person to answer to the charge in accordance with Section 306(2) of the Criminal Procedure Code.

4. At this point in time, the prosecution does not have to prove a case beyond any reasonable doubt. All that the Prosecution need to do is to place such evidence before the court which shows that unless the accused person says something, the court would be ready to convict.

5. I have myself carefully gone through the evidence on record and I am satisfied that the prosecution has established a prima facie case against the accused person requiring him to be put on his defence. I now proceed to do so as provided under section 306(2) of the CPC.

6. The accused has three options for defending himself. He can give sworn evidence after which he may be asked questions by both the state and the court. If he chooses the option of giving unsworn evidence from the dock, no one will ask him any questions. Finally the accused has the option remaining silent and letting the court decide the case on the evidence that is before it. In each case, the accused person has a right to call witnesses.

I now call upon the accused person to indicate to the court how he proposes to proceed with his defence.

Orders accordingly.

Ruling delivered, dated and signed in open court at Kakamega this 28th day of September 2015

RUTH N. SITATI

JUDGE

In the presence of:

Mr. Omwenga (present) for the State

Miss Muleshe h/b for Mr. Nyikuli for the Accused

Mr. Okoiti - Court Assistant