

THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL CASE NUMBER 19 OF 2011

REPUBLIC PROSECUTOR

VERSUS

STEPHEN WAMBUA MUTISYA 1ST ACCUSED

PETER MUIA MUTISYA 2ND ACCUSED

STEPHEN KIILU KITUKU ALIAS NJORO..... 3RD ACCUSED

RULING

The accused were charged with murder contrary to section 203 as read with section 204 of the Penal Code, particulars being that on 12th March, 2011 at Miu Village, Kivaani Location, in Kangundo District within Eastern Province, they murdered **Peter Maluki Nzuki**.

In a bid to prove its prima facie case against the accused, the prosecution called a total of six witnesses before closing its case. The question for determination at this stage is whether that evidence discloses a prima facie case against the accused to warrant them being placed on their defence. As stated in the celebrated case **of Ramanlal Trambaklal Bhatt Vs. Republic (1957) E.A. 332**, a prima case is one:

“A reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”

Having reviewed the evidence so far tendered by the prosecution, I am satisfied that the prosecution has met the threshold set out in the case of **Ramanlal Trambaklal Bhatt** (*supra*). Accordingly the accused have a case to answer. I now proceed to put them on their defence.

Under the law they have three choices in their defence. They can be sworn in which event they will be liable to cross-examination by the prosecution. They may elect to make unsworn statement in which case, they will not be liable to cross-examination. Finally, they may elect to keep quiet. In all the above choices, they are nonetheless entitled to call witnesses. I will now invite the accused to tell me the manner of their defence.

Ruling dated, signed and delivered in Machakos this 15th day of March, 2012.

ASIKE-MAKHANDIA
JUDGE