

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 52 OF 2008

REPUBLICPROSECUTOR

VERSUS

**PETER KIMARU MUMBI
ROBINSON MWANIKI MWANGI
JOHNSON MURIUKI KINYUA
EVANSON IRUMBI WANG'ONDU.....ACCUSED**

RULING

Peter Kimaru Mumbi, Robinson Mwaniki Mwangi, Johnson Muriuki Kinyua and Evanson Irumbi Wang' Ondu being the 1st, 2nd, 3rd and 4th Accused Persons respectively, are before this court on the information of the Honourable Attorney General dated 2nd October 2008 to face a charge of murder contrary to section 203 as read together with section 204 of the Penal code. The particulars of the offence are that on the 8th day of July 2008 at Tumutumu village within Central Province jointly murdered Peter Kimaru Josia.

At the close of the prosecution's case, learned counsels from both sides were invited to make oral submissions under section 306 (1) of the Criminal Procedure Code as to whether the prosecution had made out a prima facie case to enable this court place the accused persons on their defence.

I have considered the evidence of the thirteen (13) prosecution witnesses plus the oral submissions of learned counsels from both sides. It is the submission of Mr. Ng'ang'a, learned advocate for the accused persons that there is no credible evidence linking the accused persons with the offence. The learned advocate further argued that the evidence tendered by the prosecution were full of contradictions thus creating doubts which should be given in favour of the Accused Persons. Mr. Ng'ang'a further argued that the element of malice aforethought was not established.

Mr. Makura, learned Senior State Counsel was of the view that the prosecution has made out a prima facie case hence the Accused Persons should be made to answer to the charge. It is Mr. Makura's submission that the doctrine of recent possession is applicable in this case. It is also said that certain items belonging to some of the Accused Persons were found at the scene of crime. After a careful consideration of the evidence and the submission, the overall picture I get is that there is sufficient evidence linking all the Accused Persons with the offence of murder. For the above reason I place each of the Accused Persons on their defence. It is now upon them and their legal advisers to indicate to this court whether or not they would personally testify and if the answer to the above questions is in the affirmative then they should indicate whether or not they would give sworn statements and or to whether or not they would summon independent witnesses.

Dated and delivered this 25th day of November 2010.

J.K. SERGON
JUDGE

In open court in the presence of Mr. Ng'ang'a for the Accused persons and Mr. Makura for the State.