



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NYERI

Criminal Case 20 of 2008

REPUBLIC PROSECUTOR

VERSUS

1. JOSHUA KINYUA NGARI)

2. DOUGLAS MUTHIE NGARI)

3. FRANCIS NJEGA NGARI) ACCUSED

RULING

After the court's hearing of 9 witnesses, the prosecution closed its case. Learned advocate, **Mr. King'ori** for the accused then sought an opportunity to make submissions on no case to answer.

This is a case in which the three accused persons are said to have killed their father on 7th March 2008 at his home and in which the accused too resided. The accused were subsequently charged with causing the said death.

I have carefully reviewed the evidence tendered, to see if it shows a relevance of the accuseds' hand in the circumstances leading to the death of the deceased, such that it is proper that they be called upon to explain their position.

It is undesirable for me at this stage to conduct a systematic analysis of the evidence before determining the question at this preliminary stage; for if I did so, this might set sign-posts that could influence the line of defence, in the event I put the accused on their defence – and a line of defence thus pre-ordained may not be appropriate. The governing principles in this decision-making at this stage are set out in the celebrated East African Court of Appeal case of **Ramanlal Trambaklal Bhatt v/s Republic (1957) E.A. 332** where at page 335 it was stated by Sir Newnham Worley P. Thus:-

“..... The Court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively; that final determination can only properly be made when the case for the defence has been heard.”

From the evidence of the 9 witnesses, I would hold that a prima facie case has indeed been shown. I hold that the three accused in this case have a case to answer and I hereby put them on their defence.

On that basis I have to give directions for further hearing, as follows:-

- (i) The accused may elect to remain silent; and in that case they will not be asked any questions, and even if they take that option, they may call witnesses.**
- (ii) The accused may elect to make an unsworn statements, and again, in that case, they will not be cross-examined; and further they may if they wish, call witnesses.**
- (iii) Lastly, the accused may elect to make a sworn statements; but if they do, then they may be cross-examined by the prosecution; they will be at liberty, in such a case, to call witnesses.**

I will give counsel for the accused an opportunity in court to consult with his clients and then to state before the court the line of defence elected by the accused. Thereafter I will give directions for further hearing.

Dated and delivered at Nyeri this 30th day of June 2009

M. S. A. MAKHANDIA

JUDGE