



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Criminal Case 99 of 2006

REPUBLIC

-VS-

1. JAMES MOBALI AYAGA

2. CHRISTINE KALEMI

RULING

Both the accused have been charged for the offence of murder, contrary to Section 203 as read with 204 of the Penal Code Cap 63 Laws of Kenya. The particulars of the offence as stated on the information are as follows:

“On diverse dates between 25th September, 2004 and 30th September, 2004 at Mukuru kwa Njenga Embakasi within Nairobi Area jointly murdered ELIMA JAMES.

After carefully perusing the evidence of the 10 witnesses, I hereby find that the prosecution has established a prima facie case against the accused persons to require them to be put on their defence in accordance to Section 306 (2) of the Criminal Procedure Code, Cap 75, Laws of Kenya. The accused persons have the option to address the court either personally or by their advocate. In the event that the accused opt to give a sworn statement, then they will be subjected to cross-examination. They also have a right to call any number of witnesses in their defence.

Secondly, the accused persons have a right to make an unsworn statement and call witnesses to their defence. In the event that the accused persons exercise the second option, then they will not be subjected to any cross-examination.

Thirdly, the accused persons are at liberty not to offer any evidence. In that event, the Court will call upon the State Counsel to sum up the case against the accused persons. Consequently, the court shall then call on the accused persons personally or by their advocate to address the court on their own behalf.

Apart from the above, this Court has carefully considered the submissions that were made by both counsels in relation to the constitutional rights of the accused. However, the court hereby rejects the arguments by the defence counsel and wishes to reserve the full reasons to the above in the final judgment.

MUGA APONDI,

JUDGE.

4TH JUNE, 2008

Ruling read signed and delivered in open Court in the presence of the accused; Ms Wafula for Ong'ondo for Republic and Kanyangi for Accused.

MUGA APONDI,

JUDGE.

4TH JUNE, 2008.