

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

Criminal Case 67 of 2005

REPUBLIC PROSECUTOR

VERSUS

REUBEN KIPTANUI KIPTOO ACCUSED

RULING

REUBEN KIPTANUI KIPTOO has been charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code. The particulars of the offence are that on 5/6/2005 at Kamok Village, Kapchela Sub-Location, Kokwao Location in Keiyo District of the Rift Valley Province, he murdered **JOSEPH KORIR KIMITEI**.

The prosecution called nine (9) witnesses, at the end of which, it was of the view that Kiptoo, whom I shall now refer to as 'the accused' should be placed on his defence, while the defence was of a different view.

It is my task at this stage, to rule on whether, the prosecution has established that it has a prima facie case to warrant placing the accused on his defence.

I am guided by the legal principle that *'the onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if, at the close of the prosecution, the case is merely one "which on full consideration might possibly be thought sufficient to sustain a conviction.....the question whether there is a case to answer cannot depend only on whether there is "some evidence irrespective of its credibility or weight, sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence"'* (RAMANLAL TRAMBAKLAL BHATT v. R. [1957] E.A.332,333)

I have evaluated the evidence for the prosecution and I am of the view that the prosecution has a prima facie case against him and that it is necessary that the accused be placed on his defence, and I accordingly place him on his defence.

Dated and delivered at Eldoret this 21st day of June 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

Mr. Omutelema for the state

Mr. Mwetich holding brief for Mr. Kutwa for the accused person

Accused person