



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**

**Criminal Appeal 30 of 2002**

**REPUBLIC ===== PROSECUTOR**

**V E R S U S**

**RICHARD SHIRIBWA ===== ACCUSED**

**R U L I N G**

The accused, Richard Shiribwa, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the charge are:-

***RICHARD SHIRIBWA: on the 23<sup>rd</sup> day of December, 2001 at Shabwali Sub-location, Shikumu Location of Kakamega District within the Western Province, jointly with others not before court murdered FANUS MITARO ATOLE.***

Before the prosecution closed its case on 6.7.2006, a total of six prosecution witnesses had testified. The evidence clearly establishes the fact that the deceased FANUS MITARO ATOLE was murdered on 23<sup>rd</sup> December 2001. The issue for my decision at this stage is whether sufficient evidence has been adduced to establish a prima facie case against the Accused, to warrant his being put on his defence. Section 306 of the Criminal Procedure Code, Chapter 75 of the laws of Kenya enjoins me to make a finding of not guilty and to acquit the accused if I

find that the prosecution has not established a prima facie case against him. There is direct evidence in which the accused is implicated. The evidence has, in my view, established a prima facie case against the accused. It is not proper at this stage to analyze in detail the evidence so far adduced before hearing the defence of the accused.

Suffice it to say that it does establish a prima facie case. Accordingly, I put the accused on his defence. His counsel shall inform the court if the accused shall give sworn or unsworn evidence and whether he shall call witnesses.

Delivered, dated and signed on 12<sup>th</sup> October, 2006.

G. B. M. KARIUKI

J U D G E