REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 105 OF 2014

REPUBLIC.....STATE

VERSUS

KESUE OLE SURURU.....1ST ACCUSED

LANOI OLE SIMPRI.....2ND ACCUSED

DANIEL NKUITO TIAPUKEL.....3RD ACCUSED

RAYA DAPASH.....4TH ACCUSED

RULING

1. The four Accused Persons, Kesue Ole Sururu ("1st Accused Person"); Lanoi Ole Simpri ("2nd Accused Person"); Daniel Nkuito Tiapukel ("3rd Accused Person") and Raya Dapash ("4th Accused Person"), are jointly charged together with others not before the Court, with murder contrary to section 203 as read together with section 204 of the Penal Code. It is alleged that on the 9th day of October, 2014 at Muthera farm in Njoro Sub County within Nakuru County, they, jointly with others not before Court, murdered KOITUNE OLE KESHE (Deceased).

2. The Prosecution called ten (10) witnesses in its bid to prove its case. The general theory of the case was that the Accused Persons were part of a group that attacked the Deceased apparently in in retaliation of land dispute pitting their respective employers. At least one witness claimed to have witnessed the attack

3. The Court's singular task at this point in the proceedings is to make a determination whether the Accused Persons should be put on their defence. The test to be used at this point in the trial is the test for *prima facie* case long ago established in the celebrated case, ***Bhatt –vs- R [1957] EA 332***. It was held in that case that 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.

4. So, to paraphrase the authorities, a *prima facie* case is defined in the negative: A *prima facie* case is not established if at the end of the Prosecution case there is no evidence upon which, if the evidence, taken at its highest, is accepted, a reasonable court could convict. (See ***R v Galbraith 73 Cr. App. R. 124***).

5. At this point in the case, it would be improper to assess the strength or weakness of the prosecution evidence by taking a view of the witness reliability unless I came to the conclusion that the state of the evidence called by the Prosecution, taken as a whole, is so unsatisfactory, contradictory, or so transparently unreliable that no court, properly directing its mind, could properly convict on the evidence. In my view, this forbiddingly high threshold is not met here, since there is some evidence which, if accepted and

"taken at its highest", would entitle the Court to convict. At this point, the less I say, the better.

6. ***The upshot is that the four Accused Persons are, consequently, found to have a case to answer and are each put on their defence***.

7. Orders accordingly.

DATED AT NAKURU THIS 6TH DAY OF MAY, 2021

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JOEL NGUGI

JUDGE