



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**CRIMINAL CASE NO. 15 OF 2019**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**WILLIAM WANJE IHA.....ACCUSED**

**Coram: Hon. Justice R. Nyakundi**

**Mr. Mwangi for the state**

**Ms. Tonia advocate for the accused person**

**R U L I N G**

**William Wanje Iha** was indicted before this Court for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The brief particulars were that on the 4.8.2019, at around 2100 hours in Hademu Village, the accused jointly with others not before Court murdered **Ramadhan Kalama Kitsao**.

The accused having pleaded not guilty, in order to discharge its duty necessary to prove the charge beyond reasonable doubt the state summoned eight witnesses to that effect. With respect to the nature of the evidence required is for the state to prove at the end of the trial the following elements:

- (a). That the deceased Ramadhan Kalama Kitsao is dead.*
- (b). That the death was unlawfully caused.*
- (c). That in causing death, the accused was motivated by malice aforethought.*
- (d). That it's the accused who premeditated directly or indirectly to participate in commission of the offence.*

**The Law**

It is expressly provided under Section 306 of the Criminal Procedure Code that when the evidence of the witnesses for the prosecution has been concluded, the Court has the task to consider, the evidence to establish whether the elements of the offence have been established. If at the end of the prosecution case, there is no evidence to connect the accused the Court shall record a verdict of not guilty. On the other hand, if it considers that there is evidence that the accused person committed the offence, shall inform the said accused of his right to address the Court either personally or through his advocate in his defence.

In **Sanjit Chalttal v The State {1985} 39 WLR** the Court stated:

***“A submission that there is no case to answer may properly be made and upheld (a) when there has been no evidence adduced by the prosecution to prove an essential element in the alleged offence. (b). when the evidence adduced by the prosecution has been discredited that no reasonable tribunal could safely convict on it.”***

In the present case, I have taken the liberty to properly evaluate the evidence on record as well as the laid down guiding principles to prove the offence of murder.

In my view, there is sufficient evidence against the accused to warrant him to be put on his defence under Section 306 (2) as read with Section 307 of the Criminal Procedure Code.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 15<sup>TH</sup> DAY OF SEPTEMBER, 2021**

.....

**R. NYAKUNDI**

**JUDGE**

**In the presence of:**

1. The Accused Person
2. Mugambi advocate holding brief for Mwanja for the accused person