



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CRIMINAL CASE NO. 15 OF 2013**

**REPUBLIC**

**VERSUS**

**ANTONY HINGA MAINA**

**ELIJAH KABARU MUTAHI.....ACCUSED**

**RULING**

1. The accused Antony Hinga Maina and Elijah Kabaru Muthi were both charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; they are accused of having murdered Jackson Muturi Matheri on the night of 28<sup>th</sup> and 29<sup>th</sup> January, 2013 at Gathagu Market in Mathira sub-county within Nyeri County; the accused both pleaded not guilty to the charge;

2. At the hearing hereof the 1<sup>st</sup> accused was represented by Learned Counsel Mr. A.Kariuki, the 2<sup>nd</sup> accused was represented by Learned Counsel Mr. Kingori and Mrs. Gicheha was the Prosecuting Counsel for the State; the prosecution called a total of nine (9) witnesses in support of its case; at the close of the prosecution case counsel for the accused were both invited to make submissions as to whether the prosecution had made out a case to require the accused persons to be called upon to defend themselves; both counsel for the accused persons opted not to make any submissions and relied on the evidence on the record; Prosecuting Counsel for the State also relied on the evidence on record to support its case and submitted that the prosecution had made out a prima facie case against the accused and urged the court to put the accused on their defence;

3. The evidence of the prosecution witnesses **PW2** and **PW3** was that both accused persons were the last people seen with the deceased and that the deceased had been beaten up on suspicion of having been involved in a robbery that had allegedly taken place at a local bar in Gathagu market;

4. After perusal of the evidence on record this court is satisfied that even though the prosecution is relying on circumstantial evidence to prove its case, regardless of its weight, there is a scintilla of evidence that warrants putting the accused persons on their defence; reference is made to the case of **Ramanlal Bhatt vs Republic (1957) EA**.

5. For the foregoing reason this court finds that the prosecution has made out a prima facie case against the accused that warrants them to be placed on their defence to answer to the charges; their rights and options will be put to them before they present their defence;

Orders Accordingly.

**Dated, Signed and Delivered at Nyeri this 13<sup>th</sup> day of February, 2020.**

**HON.A.MSHILA**

**JUDGE**