

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL CASE NO. 68 OF 2017

REPUBLIC.....PROSECUTOR

=VERSUS=

LEONARD KIPROP SEREM.....ACCUSED

RULING

1. This is a ruling pursuant to section 306 of the Criminal Procedure Code as to whether there is a case to answer against the accused to warrant his being called upon to make his defence. Counsel for the accused and for the prosecution (DPP), when invited to make submissions on case to answer, both indicated that they did not wish to make any arguments at this stage, and left it to court to make a decision based on the evidence adduced.

2. I have considered the evidence presented to Court by the 6 prosecution witnesses and being mindful of its duty under section 306 (1) of the CPC as held by *Murimi v. R* (1967) EA 542 to acquit an accused if no evidence that the accused committed the offence, and of the standard of proof of *prima facie* evidence as set out in *Ramanalal Bhatt v. R.* (1957) EA 332, I find that although the evidence was largely circumstantial as there was no eye-witnesses to the act of killing, the prosecution has established a *prima facie* to support a finding of guilty on the circumstantial evidence (see *Simoni Musoke v. R* (1958) E.A. 715) to warrant the calling upon the Accused to make his defence.

3. The accused shall be informed of his right under section 306 (2) of the Criminal Procedure Code, “*to address the court either personally or by his advocate (if any); [and] to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence*” and the trial shall, consequently, be set for defence hearing.

Order accordingly.

DATED AND DELIVERED THIS 13TH DAY OF FEBRUARY 2020.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S Mong’eri & Co. Advocates for the Accused.

Mr. Abwajo, Prosecution Counsel for the DPP.