



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL CASE NO. 24 OF 2017

STATE.....PROSECUTION

VERSUS

JULIUS NYAKWAKA.....1ST ACCUSED

KOYO TERA OBUCHI.....2ND ACCUSED

RULING ON CASE TO ANSWER

1. The 2 accused persons herein Julius Nyakwaka and Koyo Tera Obuchi stand charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. Particulars of the information dated 4th October 2017 are that on the 22nd day of September 2017 at around 7 a.m. at Nyakasumbi area, within Bondo town, Bondo Sub-County within Siaya County they jointly Murdered Dismas Juma.
3. The accused persons pleaded Not Guilty to the charge on 13.10.2017 before Hon. James Aaron Makau and on 6.11.2017 a repeat plea was taken in respect of both accused persons.
4. The hearing commenced before me on 5.12.2018 after frantic efforts to get the defence Counsel on board.
5. The Prosecution called 8 witnesses and closed its case on 27.7.2020. The defence Counsel requested for 2 weeks to file his written submissions but as I write this Ruling, the said submissions have not been filed.
6. The issue for determination from the evidence adduced by the 8 Prosecution witnesses is whether the Prosecution has made out a prima facie case to warrant the 2 accused persons be placed on their defence.
7. Having listened to the evidence and testimonies of the 8 prosecution witnesses, at this stage, the court is not expected to delve deep into the merits and demerits of the prosecution's case but to determine whether a prima facie case has been established. A prima facie case is not necessarily one that must succeed.
8. However, to delve into the depths of the case would prejudice the accused persons especially where the court is of the opinion that a prima facie case is established against the accused persons to warrant them being placed on their defence. This does not mean that the burden of proof which always lie on the prosecution throughout the trial is shifted onto the accused persons.
9. The accused person would, if placed on their defence, be entitled to exercise their constitutional rights under **Article 50(2)(i)** to remain silent, and not to testify during the proceedings (k) to adduce and challenge evidence, (i) to refuse to give self-incriminating evidence and leave the matter to the determination by the court on the basis of adduced evidence by the prosecution witnesses, but the court shall not make adverse inference on the failure to give any evidence on defence or to challenge evidence of the prosecution.
10. Having said that, upon examining the evidence on record as a whole, I am satisfied that the prosecution has established a prima facie case against the two accused persons to warrant them to be placed on their defence.
11. Accordingly, the accused persons Julius Nyakwaka and Koyo Tera Obuchi be and are hereby found to have a case to answer and are placed on their defence. The provisions of Section 306(2) of the Criminal Procedure Code and Article 50(1)(k)(l) of the Constitution shall be complied with in respect of the accused person's rights.

12. Orders accordingly.

Dated, signed and Delivered at Siaya this 5th Day of October, 2020.

R.E. ABURILI

JUDGE

In the Presence of:

Accused persons and their Counsel Mr. Oduor present in Open court

Mr. Okachi, Senior Principal Prosecution Counsel for State

Court Assistant: Brenda