



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HIGH COURT CRIMINAL CASE NO. 60 OF 2017

FORMERLY MACHAKOS HCCRC NO. 23 OF 2016

REPUBLIC..... PROSECUTION

-VERSUS-

STEPHEN KIMONDIU NZUE.....1ST ACCUSED

JAMES MUTUA MWEI.....2ND ACCUSED

BONIFACE MUSEMBI MUTUA..... 3RD ACCUSED

JOHN NGULUI NGESI.....4TH ACCUSED

RICHARD WAMBUA MUTISO.....5TH ACCUSED

JOSEPH MUOKI NGEI.....6TH ACCUSED

BENJAMIN NZIOKA MUTUNE.....7TH ACCUSED

BONIFACE NGUMU NGESI.....8TH ACCUSED

RULING

1. All the accused persons are facing a charge of murder contrary to section 203 as read with section 204 of the Penal Code. Six (6) witnesses have testified. The first three (3) witnesses have explained what transpired on the material night prior to the deceased’s injured and burning body being found at the river.

2. **Pw4 Dr. Simon Mueke** who performed the postmortem on the deceased’s body found it to have several burns the severest and deepest being on the left side of the head and left upper limb. The head had five deep cuts. It also had open scalp fractures among many other injuries. He found the cause of death to be severe head injury and burns. The burns were above 80% EXB1. Though not a pathologist he said as a doctor he has gained experience in pathology.

3. The witnesses Pw1 – Pw3 explained what they heard, saw and did on the material night. That they explained as to who had initially injured the deceased (*not among the accused*) and who took away the deceased that night.

4. I have considered all this evidence and the submissions by all the counsel for the defence. My finding is that a prima facie case has been made out against all the accused who I hereby place on their defence.

Orders accordingly.

Delivered, signed & dated this 10th day of November 2020, in open court at Makueni.

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H. I. Ong’udi

Judge