

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 09 OF 2016

REPUBLIC.....STATE

VERSUS

EVANS LUOVA CHIVAI.....RESPONDENT

R U L I N G

Luova Chibai (herein referred to as the accused) is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 27th December, 2015 at Kisia market Lunyu sub location, Ivihiga location in Kakamega East District within Kakamega county, jointly with others not before court murdered Brian Alulu(herein referred to as the deceased).

The only witnesses who testified for the prosecution in the case were Daniel Amasa PW1 and Albert Ingalwa Shilibwa PW2. Their evidence was that on the 27th December, 2015 at 5.30 pm they were attending a graduation ceremony for circumcised boys when a group of people went there and started to throw stones at those who were attending the ceremony. The group of people who were attending the ceremony dispersed. PW1 went home. PW2 received a report that a person had been beaten and injured. He looked for a vehicle and took the injured person to hospital. The person died 2 days later. The accused was arrested by the Assistant Chief at his home. He was charged with murder. PW2 said that he had not seen the accused on 27/12/2015.

No other witness turned up to testify in the case despite the case being adjourned many times. On the 18th February, 2019 the prosecution closed its case.

This court is now being called upon to determine whether the prosecution has established a *prima facie* case against the accused that would require him to be placed to his defence.

A prima facie case, it has been held, means-

“one on which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence- See **Ramanlal Trambaklal Bhatt – Vs – Republic (1957) EA332.**

The witnesses who testified for the prosecution in this case, PW1 and 2, do not know why the accused was charged with the murder of the deceased. No evidence has been adduced to link the accused with the death of the deceased or why he was charged with the offence. The evidence in record cannot lead to the conviction of the accused person if placed to his defence. The upshot is that the prosecution has not established a *prima facie* case against the accused. The accused has no case to answer and is accordingly acquitted of the offence charged vide the provisions of section 210 of the Criminal Procedure Code.

Orders accordingly.

Delivered, dated and signed in open court at Kakamega this 13th day of March, 2019.

J.NJAGI

JUDGE

In the presence

Mr. Onyige.....for state

Mr. Shifwoka.....for accused

Court Assistant.....George