



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CRIMINAL CASE NO. 125 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**NELSON CHEPKWONY.....ACCUSED**

**RULING**

1. The Accused Person, Nelson Chepkwony, 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 29<sup>th</sup> day of November, 2014 at Ekapulele Village within Nakuru County, the Accused Person is alleged to have murdered Robert Kipyegon Kiptesot.
2. The Prosecution called six witnesses to establish its case. The Prosecution narrative is that the Accused Person was a friend to the Deceased and that they were last seen together when the Deceased went to sleep in the Accused Person's house. Later, his remains were found in a bush. The Prosecution alleges that blood stains in some items found in the Accused Person's house further links him to the murder.
3. At this stage in the proceedings, the Court is required to make a finding whether the Prosecution has presented sufficient evidence to require the Accused Persons to be put on their defence or whether the case should be stopped at this point. The test to be utilized is the famous one stated in *Bhatt –vs- R [1957] EA 332*: whether, as a matter of law – without taking any conclusive view of the credibility and probative value of the evidence presented – the Prosecution has adduced *reasonable sufficient evidence* of the matter in respect of which it has the burden of proof. Reasonable sufficient evidence is one which a reasonable tribunal could convict.
4. In my view, after considering all evidence tendered in the case and the submissions of the Defence Counsel, I have come to the conclusion that the evidence presented “taken at its highest”, meaning without final determination as to its creditworthiness or weightiness (See *R v Galbraith 73 Cr. App. R. 124*) – *could* lead a reasonable court to convict if no explanation is offered by the Defence.
5. Consequently, the Court finds that the Accused Person has a case to answer and puts him on his defence. The case shall be set down for defence hearing.

Delivered at Nakuru this 7<sup>th</sup> day of March, 2019.

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JOEL NGUGI

JUDGE