



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 51 OF 2009**

**REPUBLIC**

**VERSUS**

**DENNIS MURIITHI JULIUS.....ACCUSED**

**RULING**

1. The accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; he was accused of having murdered Peterson Kaliku Kamau on the 9<sup>th</sup> day of October, 2009 at Ragati Village in Nyeri County;
2. On the 21<sup>st</sup> May, 2013 the accused entered a plea of Not Guilty; the hearing of the matter commenced on the 18/07/2016 and at the hearings hereof the accused was at all times represented by Learned Counsel Mr Gathiga Mwangi whereas Ms. Gicheha was the Prosecuting Counsel for the State;
3. The prosecution called a total of nine (9) witnesses in support of its case; at the close of the prosecution case defence counsel was invited to make submissions as to whether the prosecution had made out a case that required the accused to be called upon to defend himself; defence counsel for the accused made oral submissions and stated that the prosecution had not made out a prima facie case against the accused as laid down in the renowned case of **Bhatt vs Republic (1957)**; that there were four key elements of the offence that needed to be proved by the state as set out in the case of **Antony Ndegwa vs Republic (2014) eKLR**; the key elements being that the deceased died; the cause of death; that the accused committed the unlawful act or his act of omission; lastly the accused had malice aforethought;
4. Counsel submitted that the first two elements were proved but the other elements there was no sufficient evidence linking the accused to the murder as the prosecution had failed to call the witnesses who had seen the deceased and the accused fighting; in the case of **Sawe vs Republic** it was held that suspicion no matter how strong cannot be treated as credible evidence against an accused;
5. That in totality '***actus reus***' and '***mens rea***' were not proved as required in murder cases; counsel urged the court to consider the evidence in totality and find that the accused had no case to answer and that he be acquitted;
6. Prosecuting counsel for the State opted to rely on the evidence on record;
7. After hearing the oral submissions and having evaluated all the evidence on record this court finds that there is a scintilla of evidence adduced by the Prosecution that links the accused with the infliction of the injury to the deceased and his death; this court is thus satisfied that the Prosecution has established a prima facie case against the accused that warrants him to be placed on his defence to answer to the charges; his rights and options will be put to him before he presents his defence;

Orders Accordingly.

**Dated, Signed and Delivered at Nyeri this 4<sup>th</sup> day of April, 2019.**

**HON.A.MSHILA**

**JUDGE**