



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 13 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

PHILEMON KIPCHUMBA CHELIMO.....1ST ACCUSED

MARTIN KIPKEMOI KOMEN.....2ND ACCUSED

RULING

PHILEMON KIPCHUMBA CHELIMO and *MARTIN KIPKEMOI KOMEN* are charged with the offence of Murder, contrary to *Section 203* as read with *Section 204* of the *Penal Code*.

The particulars of this offence are that on the night of the 16th and 17th day of January, 2013 at Kamoi village in Kapsicha sub location within Elgeyo-Marakwet County, the accused persons murdered *Paul Chelang'a*.

The accused were charged on 21st January 2013 and by the time the prosecution closed their case on 11th December, 2018, they had only managed to call two witnesses who are brothers to the deceased. Their case is that the deceased's wife (Mary) had left the deceased and gone back to her home at Kamoi village. The deceased followed her there. The following day they received a report from Mary that the deceased had died. They went to Mary's home in Kamoi village and found that the deceased had been taken to Iten hospital mortuary. On 22nd January, 2013 they were called by the police to go to the mortuary to identify the body for post mortem. They did so. They identified the body which had burns on both sides of the lower part. Post mortem was conducted. There was blood in the brain. The accused persons who are Mary's brothers, were arrested and charged. They had a cordial relationship with the deceased. The two witnesses could not tell who killed the deceased or why the accused persons were charged.

In determining whether the evidence establishes a prima facie case against the accused persons, I have considered that the evidence does not link them to the death of the deceased and the cause of death to the deceased was not established. Crucial witnesses in the case were not availed by the prosecution within the many opportunities accorded to them by the court to do so. The investigating officer and the Doctor who did the post mortem and filled the report were not called. Prosecution therefore prematurely closed their case before it was well rooted. The evidence does not connect the accused to the deceased's death and they cannot therefore be blamed for it. A prima facie case is not established against them and are accordingly acquitted of the offence under *Section 210* of the *Criminal Procedure Code*.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 14th day of May, 2019.

In the presence of:-

Mr. Chemoyai for the 1st accused person also holding brief for Mrs Orina for the 2nd accused person

Ms Mokuia for state /prosecutor

Ms Topister - Court Assistant

Court:

Surety is discharged.

SIGNED

S.M GITHINJI

JUDGE

14/5/2019