



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAKURU**

**CRIMINAL CASE (MURDER) NO. 39 OF 2015**

**REPUBLIC.....PROSECUTOR**

**-VERSUS-**

**HARRISON KIMANI.....1<sup>ST</sup> ACCUSED**

**MICHAEL NAKUTI.....2<sup>ND</sup> ACCUSED**

**SHADRACK MITSELA.....3<sup>RD</sup> ACCUSED**

**BRYDON VWAMU.....4<sup>TH</sup> ACCUSED**

**RULING**

**Section 306(1) of the Criminal Procedure Code** provides that upon closure of the prosecution case, if the court considers that there is no evidence that the accused or any of them committed the offence, and upon hearing submissions by both the prosecution and the defence, record a finding of not guilty.

However, if the evidence on record is sufficient to link any of the accused to the commission of the offence, the said accused shall be called upon to answer to the charges – **Section 306(2)**.

I have carefully considered the evidence of the nine prosecution witnesses.

PW2, PW6 and PW8 who were at the scene of crime did not see the 1<sup>st</sup> accused beat or participate in the fight that led to the deceased's death. The witnesses pointed fingers at the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons as the persons who beat the deceased during the fight.

I therefore find and hold that a *prima facie* case has been established against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons. They shall be placed on their defence, in terms of **Section 306(2) of Criminal Procedure Code**.

Accordingly, there being no sufficient evidence on record to link the **1<sup>st</sup> accused** to the commission or participation in the offence, **I enter a verdict of not guilty against him**, and set him free unless otherwise lawfully held.

**Delivered, signed and dated at Nakuru this 12<sup>th</sup> Day of November 2019.**

.....

**J.N. MULWA**

**JUDGE**