



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CRIMINAL CASE NO. 5 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

TITUS MBIA SINGI.....1ST ACCUSED

MARY WAMBUA NGOTO.....2ND ACCUSED

MWANGU MWANGANGI.....3RD ACCUSED

MUTINDA NGANGI KINEENE.....4TH ACCUSED

JOEL MUTIE NGAI.....5TH ACCUSED

JOHN MWANZILA MWANZIA.....6TH ACCUSED

R U L I N G

1. **Titus Mbia Singi, Mary Wambua Ngoto, Mwangu Mwangangi, Mutinda Ngangi Kineene, Joel Mutie Ngai and John Mwanzila Mwanzia** hereinafter, Accused 1, 2, 3, 4, 5, and 6 respectively, are jointly charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code (Cap. 63), Laws of Kenya**. Particulars of the offence are that on the **30th day of March, 2010** at about **9.30 p.m.** at **Malili Village**, in **Kibwea Location of Mutomo District** within **Eastern Province**, jointly murdered **Benrodgers Mutua Kamanza**.

2. Facts of the case are that on the **30th March, 2010** at about **9.00 p.m.** the Deceased and his family had just retired to bed when an armed gang broke into their house and attacked them. The attackers demanded for cellphones and cash money from them and fatally wounded the Deceased. He was rushed to hospital but pronounced dead. An autopsy done on his body revealed that the cause of death was massive subdural haemorrhage secondary to skull fracture secondary to penetrating injury. Investigations carried out culminated into the arrest of the Accused persons who were subsequently charged.

3. At the close of the Prosecution's case the burden of prove was to be discharged by the Prosecution and the standard required is proof beyond reasonable doubt. The Prosecution was duly bound to prove:

- i. the fact of death;
- ii. that it was caused by the Accused persons;
- iii. and that they acted with malice aforethought.

4. The fact of death of the Deceased was proved by evidence adduced by eye witnesses and the Doctor who performed the autopsy. PW10, **Dr. Doris Nthenya Mbithi** opined that the cause of death was massive subdural haemorrhage secondary to skull fracture secondary to penetrating injury.

5. No doubt the Deceased was a victim of brutal murder. The attackers were many but PW1 and PW2 identified some of them. PW1 **Agnes Muthini Mutua** stated that she recognized the voices of Accused 1, 2 and 3. PW2 **Timna Kalimi Mutua** on the other hand recognized Accused 6. Her evidence against him was visual identification. She also stated that she recognized the voice of Accused 2. PW3 **Lawrence**

Mwamuli Kamanza stated that he saw **Kitili Wambua** chasing after **Japheth Mutinda** the workman of the Deceased. He also saw Accused 1 who was armed with a bow and arrow.

6. To put the Accused on their defence a *prima facie* case must be established against them. In the case of **Ramanlal Trambaklal Bhatt vs. Republic (1957) EA 332** the Court stated that:

“..... it may not be easy to define what is meant by a “prima facie case,” but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered.”

7. At the close of the Prosecution’s case Accused 3 and 4 were not mentioned as having been identified by any of the eye witnesses. They were arrested with others having been identified by PW5 **Thomas Isalu Kiema** the Senior Assistant Chief, Vote Sub-location who received a list consisting of sixteen (16) people that he was directed to arrest.

8. In the premises no *prima facie* case has been established against them. In the result they are acquitted under **Section 306(1)** of the **Criminal Procedure Code**.

9. For Accused 1, 2, 5 and 6 evidence adduced against them is sufficient to require them to defend themselves pursuant to the provisions of **Section 306(2)** of the **Criminal Procedure Code**.

10. It is so ordered.

Dated, Signed and Delivered at Kitui this 8th day of February, 2018.

L. N. MUTENDE

JUDGE