

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 19 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

NGALA KIVOTO.....ACCUSED

R U L I N G

1. **Ngala Kivoto**, the Accused, is 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 **18th day of June, 2015** at **Kavete Village** in **Mutomo Sub-county**, within **Kitui County**, jointly with others not before Court murdered **Gideon Kisomo Ndoyo** (Deceased).

2. Facts of the case are that on the **18th June, 2015** at about **7.00 p.m.** PW8 **Gedion Mwendwa** was on his way home from the shop when he encountered the Accused, his uncle. He accused him of grazing animals on his land and he assaulted him. He went home and informed PW1, **Josephine Mulewa Gedion** his mother, and the Deceased, his father and cousin of the Accused. On receiving the report, the Deceased decided to go and find out from the Accused why he assaulted his son. In the meantime the Accused went in search of PW8. PW1 went out and tried convincing him to wait for the issue to be sorted out the following day. The Accused reminded her how their herd of animals was destroying his crop. When she begged him to leave he removed a stick that he had concealed beneath his clothes and left. They waited for the Deceased but he was not returning home. Two (2) of his children decided to look for him. They found his motionless body some approximately 200 meters away from their home alongside the footpath. Beside the body they saw a cap that they believed belonged to the Accused.

3. PW7 **No. 37394 Sergeant William Kipro** received a report of murder and moved to the scene at **2.30 a.m.** They collected exhibits and removed the body which they escorted to Kitui District Hospital.

4. On the **19th June, 2015** PW3 **Onesmus Mulwa Kyamata** who resides at **Voo Mutomo** went back home at **6.30 p.m.** and found a stranger, the Accused herein. He was seeking for a job. He had an old identity card which bore the name **Ngala Kivo**. He gave him menial work. He worked and received wages on casual basis. On **23rd June, 2015** he heard news about a person who had murdered his cousin at **Kyatune**. He notified the police of the Accused's presence on his farm. He was arrested and subsequently charged.

5. The body of the Deceased was examined. PW10 **Dr. Cosmas Mutisya** who did the autopsy formed the opinion that the cause of death was the frail chest and severe head injury caused by high energy blunt force.

6. In the case of **Ramanlal Trambaklal Bhatt vs. Republic (1957) EA 332** the Court stated that:

“The onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if at the close of the prosecution's, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction..... The question whether there is a case to answer cannot depend only on whether there is 'some' evidence irrespective of its credibility or weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough, nor can any amount of worthless discredited evidence.”

7. At the close of the Prosecution's case the circumstantial evidence adduced was sufficient to have the Accused called upon to explain what transpired. In the premises, I find the Prosecution having established a *prima facie* case warranting the Accused to be put on his defence per the provisions of **Section 306(2)** of the **Criminal Procedure Code**.

8. It is so ordered.

Dated, Signed and Delivered at Kitui this 7th day of February, 2018.

L. N. MUTENDE

JUDGE