



**REPUBLIC OF KENYA**

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

**HCCRC 28 OF 2016**

**REPUBLIC.....STATE**

**VERSUS**

**MATHAYO LUKAVILO SIFUNA.....ACCUSED**

**R U L I N G**

The accused is charged with murder contrary to section 203 as read with section 204 of the penal code. The particulars of the offence are that on the 27<sup>th</sup> April, 2016 at Shikutse sub – location in Lukume location in Kakamega North sub county he murdered Francis Okonga Yeswa (*herein referred to as the deceased*).

The prosecution case is that the accused is a son to the deceased. The accused and the deceased were living in the same homestead. That on the material day the deceased and the accused were at home. Other family members who were at home were the wife to the deceased PW1 who is a step mother to the accused, the accused's step brothers, Peter Okonga PW2 and Henry Wekesa PW5 and the accused's step sister Janet Nabuyi PW8.

That the accused took a jembe and started to plant flowers on a portion of land outside his father's homestead. His father told him to stop working on that portion of the land as he had shown him his portion of the land elsewhere on the farm. The accused did not need. The two started to quarrel.

The deceased took an axe and wanted to attack the accused with it. His wife PW1 snatched the axe from him. She went to keep the axe in the house. The accused was by then armed with apanga and a jembe. He cut the deceased with a jembe on the head. The jembe stuck on the head. The incident was witnessed by PW1, PW2, PW5 and PW8. Haron Mulunda PW6 who had been passing by and was attracted by the quarrel into the homestead of the deceased also witnessed the incident. The accused disappeared after assaulting the deceased.

The deceased was taken to Kakamega County Referral Hospital. He was admitted. He died on the following day. On 5/5/16, Dr. Muchana PW7 conducted a post- mortem on the body. He found it with a deep penetrating cut wound on top of the scalp with a fracture of the scalp. He formed the opinion that the cause of death was due to raised pressure in the brain secondary to a cut wound.

A report was made at Kakamega Police station. The accused was arrested by the area Assistant Chief, PW4. Pw4 retrieved the jembe the deceased was cut with from the home of the deceased. He handed it over to the investigating officer, PC Kiplagat PW9.

PC Kiplagat then charged the accused with the offence. During the hearing the jembe and the post-mortem report were produced in court as exhibits, Exhs. 1 and 2 respectively.

At the close of the case for the prosecution the advocate for the accused, Miss Wilunda, submitted that there was no prima facie case established against the accused. She submitted that there was no direct evidence to link the accused with the offence. That the investigating Officer is not the one who recovered the jembe and that the blood stains on the jembe were not examined to link them with the accused or the deceased.

The question is whether the prosecution has established a prima facie case against the accused.

A prima facie case means

***“... One on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence “.. see Ramanlal Trambaklal Bhatt Vs Republic (n 1957) E.A 332.***

The deceased died as a result of a cut wound on the head. Five prosecution witnesses are alleging that the accused is the one who inflicted the fatal blow. I find that a prima facie case has been established against the accused to require him to make a defence. The accused has a case to

answer and is accordingly placed to his defence.

**Dated, signed and delivered in open court at Kakamega this 20<sup>th</sup> day of September,2018**

**J. NJAGI**

**JUDGE**

In the presence of:                      The accused

Miss Wilunda .....for accused – absent

Juma ..... for state

George ..... court assistant