



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**CRIMINAL (MURDER) CASE NUMBER 11 OF 2017**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**PETER KADUNGO.....ACCUSED**

**CORAM: LADY JUSTICE RUTH N. SITATI**

**RULING**

**Introduction**

1. The accused person herein is on trial for the offence of ***murder Contrary to Section 203 as read with Section 204 of the Penal Code***, the particulars thereof being that on the 28<sup>th</sup> day of September, 2017 at Ptokou Village in West Pokot County, jointly with another not before court murdered KAKUKO KIRAKWANG. The accused pleaded not guilty to the charge when he appeared for plea on 24<sup>th</sup> October, 2017.

**The Prosecution Case**

2. The prosecution called 5 witnesses to testify against the accused. PW1 was James Kariwanyang, Dr. Jotham Mukhola of Kapenguria County Referral Hospital testified as PW2. Dr. Mukhola carried out the post mortem examination on the body of the deceased. Patrick Kariwanyang testified as PW3 while Paul Kaspan Kariwanyang and number 47928 PC Boniface Wayong testified as PW4 and PW5 respectively.

**Submissions**

3. At the close of the prosecution case, counsel for the accused submitted that the prosecution had not established a prima facie case to warrant putting the accused on his defence. It was submitted that the prosecution evidence did not point to the accused as the person who assaulted the deceased, and that in any event none of the alleged eye witnesses saw the accused assaulting the deceased; and that this being the case, the evidence by PW1 remains uncorroborated and therefore insufficient for purposes of establishing a prima facie case against the accused. Counsel urged the court to make a finding that the accused has no case to answer and to acquit him under ***Section 306(1) of the Criminal Procedure Code***.

4. In response, the prosecution submitted that the evidence from the 5 prosecution witnesses clearly establishes a prima facie case to warrant the accused being put on his defence. Counsel urged the court to make a finding to that effect.

**Issue, Analysis and Determination**

5. The issue for determination at this stage is whether the evidence on record is such that unless the accused offers a response, this court would be ready to convict. See ***Bhatt versus R [1957]EA 332*** and ***Murimi versus Republic [1967]EA 542***. In the latter case, the court held that ***“a prima facie case can be described as that which would sustain a conviction if the defence fails to call evidence in rebuttal.”***

6. Upon careful analysis of the evidence on record, I am satisfied that the prosecution has established a prima facie case against the accused which requires the accused to be put on his defence. The accused has therefore got a case to answer, and is accordingly put on his defence. In this regard, and as provided under ***section 306(2) of the CPC***, the accused may give sworn or unsworn evidence, or he may choose to remain silent and let the court decide the case on the evidence that is before it. If the accused gives sworn evidence, both the court and the prosecution may ask him questions. If he gives unsworn evidence, no questions will be put to him. Unless he decides to remain silent, he is at liberty to call witnesses in his defence. I now call upon the accused to indicate how he intends to defend himself.

It is so ordered.

**Ruling delivered, dated and signed in open court at Kapenguria this 19<sup>th</sup> day of September, 2018.**

**RUTH N. SITATI**

**JUDGE**

In the Presence of

M/S Kiptoo for the state

M/S Bartilol for the accused

Mr. Juma Barasa – Court Assistant