

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 24 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

KITEME MAANGI ALIAS NYAMAI.....ACCUSED

R U L I N G

1. **Kiteme Maangi alias Nyamai** 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 **3rd day of November, 2010** at around **3.00 p.m.** at **Kalua Village Musukini Sub-location, Mutitu Location, Mutitu District** within **Kitui County** Murdered **Katambo Maangi** (Deceased).

2. Facts of the case are that the Accused and Deceased were step-brothers and had a land dispute that was being arbitrated upon by the clan. On the **3rd November, 2010** the Deceased passed by the home of PW1, **Kakuo Maangi** his mother where he was given a cooking stove (jiko) but not flour that he needed. Thereafter PW3 **Titus Muthambi Jane** and PW4 **Ruth Mwendu** were on the farm tilling land at about **8.00 a.m.** when the Accused passed by. PW3 heard him screaming vowing to kill the Deceased. He carried a panga that was tucked on the side of his belt and a club. He followed the Accused. The Deceased was sitting under a tree. He confronted the Deceased, they argued and the Deceased ran away being pursued by the Accused who caught up with him and assaulted him using the weapon that he had. In the meantime people who heard screams gathered. The Deceased succumbed to injuries sustained.

3. The police on being notified visited the scene and removed the body of the Deceased to the **Kitui District Mortuary**. A postmortem was later performed by PW6, **Doctor Patrick Mutuku** who opined that the cause of death was subdural haematoma due to depressed skull fracture due to trauma (Assault) hence the case.

4. To put the Accused on his defence, the duty was upon the Prosecution to establish a *prima facie* case against him. What constitutes a *prima facie* case was clearly stated in the case of **Ramanlal Trambaklal Bhatt vs. Republic (1957) EA 332** where the court stated thus:

“.....a prima facie case is made out if, at the close of the prosecution, the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction..... 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 by the defence.”

5. From the foregoing it is apparent that the Prosecution has established a *prima facie* case against the Accused requiring him to be put on his defence which I hereby do pursuant to the provisions of **Section 306(2)** of the **Criminal Procedure Code**.

6. It is so ordered.

Dated, Signed and Delivered at Kitui this 11th day of January, 2017.

L. N. MUTENDE

JUDGE