

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL DIVISION

CRIMINAL CASE NO. 37 OF 2014

REPUBLICPROSECUTOR

VERSUS

ANTONY KHANYAHA SITUETI.....ACCUSED

R U L I N G

1. On 14th July, 2014 the accused appeared before the Deputy Registrar of this Honourable court pending production before a Judge for plea. He is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on the 6th day of July, 2014 at Bulukhombe Village, Mahanga Sub-location Shavirunga location in Hamisi Sub- County within Vihiga County, murdered Thomas Savala Situeti. The accused pleaded not guilty to the charge when he appeared before Honourable Mr. Justice A.C. Mrima on 16th September, 2014.

2. The hearing of the case started on 27th July, 2016. The prosecution called 5 witnesses in its effort to prove the charge against the accused. The main prosecution witness was Joseph Sabara Sakayo who testified as PW1. He stated that on the night of 6th July, 2014 at about 8.00pm, he saw the accused herein assaulting the deceased; using a spade, [parts of which were produced as PExhibits 1 and 2 respectively.] Sabara testified that his pleas to the accused to leave the deceased alone fell on deaf ears as accused also threatened to kill him as well. The deceased and Sabara are brothers, while the accused is son to the deceased. He left them the way he found them.

3. In the morning, Sabara found the deceased lying on the bed covered with a blanket. He was dead. A report was made to the village elder, Loys Mmbone Luyeka, PW2. The accused also made a report of the incident to PW2 who informed the Assistant Chief and the police at Serem Police Station. The deceased's body was removed to Vihiga County Hospital Mortuary. Post mortem was conducted on the body of the deceased by Dr. Emurundi. The post mortem report was produced by Dr. David Akaliche of Vihiga District Hospital. According to the report the deceased had multiple bruises over the left orbital region and left costal and left hip region. There was also a deep cut wound on the cranial aspect.

4. Internally, there was fibrosis in the respiratory system with fracture of the left 3rd – 7th ribs. In the doctor's opinion, the cause of death was cardiopulmonary arrest due to massive haemorrhage. The post mortem report was produced as PExhibit 1.

5. I have considered the above evidence as well as the evidence of Seth Nandwa Jiveti PW3 as well as that of No. 71799 CPL Gilbert Ekirapa who is also the Investigating Officer and who testified as PW5. The question that arises for determination is whether the prosecution has made out a prima facie case requiring the accused person to be put on his defence. Miss Rauto who appears for the accused did not make any submissions on the issue.

6. From the evidence on record, and applying the principles enunciated in the case of **Bhatt – vs – R[1957]EA 332**. I am satisfied that the prosecution has established a prima facie case requiring the accused to be put on his defence. Section 306(2) gives accused the liberty to give sworn evidence or to give an unsworn statement. In either case, he is at liberty to call witnesses. If he gives sworn evidence, he may be asked questions both by the State and the Court. He may also choose to remain silent and let

the court decide the case on the evidence before it.

7. The accused may now indicate to the court how he proposes to proceed with his defence.

Orders accordingly,

Ruling delivered, dated and signed in open court at Kakamega on this 21st day of February 2017

RUTH N. SITATI

JUDGE

In the presence of;-

Miss Tarus (present).....for state

Miss Shirika for Rauto (present).....for accused

Mr. Polycap.....Court Assistant.