

KTI.NO.162/2017

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 62 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

CHRISTOPHER WALTA1ST ACCUSED

LEONARD LANGAT.....2ND ACCUSED

R U L I N G

1. **Christopher Walta** and **Leonard Langat**, hereinafter the 1st and 2nd Accused respectively are 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 1st day of **May, 2014** at about **10.00 a.m.** at **Nzangathi AP Camp, Kyalele Location** in **Kitui County**, murdered **Mwangangi Mwanzui** (Deceased).

2. The Deceased was arrested and taken to **Nzangathi AP Camp** following a complaint of theft against him by his mother, PW1 **Ruth Muia**. He was taken into custody by the Accused who assaulted him until he became unconscious. He passed on. The body was moved to **Kitui District Hospital**.

3. PW3 **Doctor Patrick Mutuku** carried out an autopsy on the body of the Deceased and found it having sustained injuries externally. There were bruises on the face more marked on the left side. The left limb was swollen especially on the shoulder. The right forearm had a bruise. He formed an opinion that the cause of death was cardio-respiratory arrest due to possible shock due to severe pain.

4. To put the Accused on their defence there must be sufficient evidence to call upon them to defend themselves. The Prosecution should have established a *prima facie* case against them.

5. What constitutes a *prima facie* case was stated in the case of **Ramanlal Trambklal Bhatt vs. Republic 332** where the Court stated thus:

“A prima facie 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”. This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. 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.”

6. Evidence adduced so far establish a *prima facie* case requiring the Accused being put on their defence pursuant to the provisions of **Section 306(2)** of the **Criminal Procedure Code**.

7. It is so ordered.

Dated, Signed and Delivered at **Kitui** this **21st** day of **February, 2017**.

L. N. MUTENDE

JUDGE