

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL DIVISION

CRIMINAL CASE (MURDER) No.1 of 2014

REPUBLIC.....PROSECUTOR

VERSUS

JOHN OBIELO ITAKA.....1ST ACCUSED

ASTON MBUTA ITAKA.....2ND ACCUSED

R U L I N G

Introduction

1. The two accused persons 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, the particulars being that on the 8th day of November, 2013 at Shidodo Sub-Location in Kakamega East District within Kakamega County jointly with another not before court, murdered Josepha Mkabwa Shabwila. Both accused denied committing the offence.

2. The prosecution called 5 witnesses in an attempt to prove the allegations against the two accused persons. At the close of the prosecution case, both counsel left the matter to the court to determine whether or not the accused persons have a case to answer.

3. After carefully reading through the evidence of the five prosecution witnesses, and applying the principles' enunciated by the court in the case of Bhatt – Vs _ Republic [1957] EA 332, I am satisfied that the prosecution has established a prima facie case requiring both accused persons to be placed on their defence, and I proceed to place them on their defence.

4. The accused may give sworn or unsworn evidence or alternatively they are at liberty to remain silent and let the court decide the case on the evidence that is before it. If they give sworn evidence, they may be asked questions both by the prosecution and the court. If they elect to give unsworn testimony, they will not be asked any questions. In each case, they are free to call witnesses.

5. The accused may now indicate to the court how they intend to proceed with their defence.

Orders accordingly

Ruling delivered dated and signed in open court this 10th day of May 2017

RUTH N. SITATI

JUDGE

In the presence of:-

Mr. Onsando Holding brief for Elung'ata.....For Accused

Mr. Juma.....For state

Polycap.....Court Assistant