

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL CASE NO. 23 OF 2014

REPUBLIC

VERSUS

NUR MAALIM MOHAMED.....1ST ACCUSED

SHABAN MOHAMED ISSACK.....2ND ACCUSED

RULING

At the close of the prosecution evidence, counsel for both the accused – Mr. Nyaga submitted that the accused had no case to answer. Counsel emphasized that the incident occurred at night, and the culprits were not identified at the scene. Counsel stated that the evidence of the prosecution on record fell short of the threshold required in criminal cases where the case is hinged on circumstantial evidence, and urged the court to acquit both accused under section 208 of the Criminal Procedure Code (cap. 75).

Mr. Okemwa for the state submitted that a prima facie case had been established against each of the two accused, which connected them to the killing of the deceased.

I have considered the submissions on both sides on case to answer. I appreciate that this is a case based on circumstantial evidence. At this stage of the case, the court is not required to go into the details of determining whether the prosecution has proved its case against the accused beyond any reasonable doubt. That is why, the standard of proof required is establishment of a prima facie case – where on considering the evidence on record the court may not must convict – if the accused does not say anything.

In my view, the prosecution has established a prima facie case against each of the two accused herein. I will thus put them on their defences.

I thus find that each of the accused has a case to answer. I put each of the two accused on their defence. I hereafter proceed to explain to them the options available to them in their respective defences – under section 211 Criminal Procedure Code.

Dated and delivered at Garissa this 4th day of May 2017

GEORGE DULU

JUDGE