

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT GARISSA
CRIMINAL CASE NO.7 OF 2013

REPUBLIC

VERSUS

1. ABDI SAMAD MOHAMMED MOHAMUD

alias ABDI MUHUMED MOHAMMED

2. ABDI IBRAHIM HAIDHER alias AGAWEN

RULING

Both accused persons stand charged jointly with murder in three counts.

At the close of the prosecution evidence both defence counsel Mr. Nyaga for 1st accused and Mr. Onono for 2nd accused made strong submissions that their clients had no case to answer. They urged the court not to put their clients on their defences. The prosecution counsel Mr. Okemwa felt that the accused had a case to answer.

I appreciate that post mortem reports were not produced because the respective doctors were not available. In my view however death can in certain circumstances be proved without production of a post mortem form or report. Details of such circumstances will be gone into during final judgment when the totality of the evidence will have to be evaluated.

For now however, at this stage of case to answer, the standard of proof is different. The prosecution is merely required to establish a prima facie case. I find that the prosecution has established a prima facie case against each of the two accused persons herein. Each has a case to answer.

I thus put both accused on their defences, and proceed to explain them the three options available to them under section 211 of the Criminal Procedure Code Cap 75.

Dated and delivered at Garissa this 3rd May 2017

GEORGE DULU

JUDGE