

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 64 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

ALEX KIPNGETICH KIBET ALIAS KIPMWETICH.....ACCUSED

RULING

1. The accused *Alex Kipngetich Kibet* alias *Kipmwetich* faces a charge of Murder contrary to *Section 203* as read with *Section 204* of the *Penal Code*. It is alleged that on the night of 16th and 17th September, 2011 at Cheburet village Marakwet West District of the Rift Valley province, jointly with others not before the court, the accused murdered *Joseph Kigen Banwa*. He denied the charges.

2. In support of its case, the prosecution called a total of eight witnesses. The court record shows that the trial started before *Hon. Mshila J* on 20th March, 2012. She heard five witnesses- before she was transferred to another court. When I took over the trial on 22nd October, 2014 the accused elected under *Section 200(3)* of the *Criminal Procedure Code* that the case should be heard afresh. I then ordered that the case should start *denovo*.

Thereafter, I heard all the eight prosecution witnesses.

3. At the close of the prosecution case, learned prosecuting counsel *Ms. Kigegi* opted not to make any submissions under *Section 306 (1)* of the *Criminal Procedure Code*. She chose to rely on the evidence on record. Learned counsel for the accused *Mr. Miyianda* made oral submission contending that the prosecution had failed to establish a *prima facie* case against the accused.

4. I have considered all the evidence tendered by the eight prosecution witnesses and the oral submissions made by *Mr. Miyianda* for the accused.

I am satisfied that the evidence on record sufficiently discloses a *prima facie* case against the accused as defined in ***Bhatt V Republic (1957) EA 332***.

I therefore find that the accused has a case to answer and he is accordingly put on his defence under *Section 306 (2)* of the *Criminal Procedure Code*.

Orders accordingly.

C. W GITHUA

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 7th day of June 2017

In the presence of:-

Accused

Mr. Muchiri for the state

Mr. Miyianda for the accused

Mr. Lobolia court clerk