

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 14 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

MUTHEE SAA.....ACCUSED

RULING

1. **Muthee Saa**, the accused, is 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 **28th** day of **January, 2010** at **Makauru Village, Tseikuru Location, Tseikuru District** within **Eastern Province**, murdered **Daniel Marigu Kiryamutu** (deceased).
2. Facts of the case were that on the **28th January, 2010**, the accused disagreed with PW1, **Syengo Mbweria**, a brother to the deceased. He assaulted PW1 who was rescued by his brother, the deceased and other revelers who were drinking traditional liquor. Their action prompted the accused to fight the deceased. They were separated but the accused vowed to kill PW1 and the deceased. PW3 **Joseph Musembi** the owner of the home intervened and they all left for their respective homes.
3. It turned out that the accused went in search of the deceased and met his wife, PW8, **Nginu Mangu**. The deceased was not home yet. After a while they heard him singing. The accused left going to meet him. All over a sudden PW8 heard the deceased asking why the accused had shot him with an arrow. She sought assistance from her son and another. They carried the deceased who was injured to the house. The following morning he was taken to hospital as he had bled profusely. He was pronounced dead. The postmortem done on his body revealed that he died of cardio respiratory arrest secondary to collapse of lungs.
4. In the case of **Ramanlal Trambaklal Bhatt vs. Republic (1957) EA 332** it was stated that:

“..... A prima facie case is made out if at the close of prosecution, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction. The question whether there is a case to answer cannot depend only on whether there is ‘some’ evidence irrespective of its credibility or weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence.”

5. At the close of the Prosecution’s case there was evidence linking the accused to the act of committing the offence in question such that if he opted to remain silent when put on his defence, a conviction would result. In the premises a *prima facie* case has been established warranting the accused being put on his defence – pursuant to the provisions of **Section 306(2)** of the **Criminal Procedure Code**.
6. It is so ordered.

Dated, Signed and Delivered at Kitui this 10th day of February, 2016.

L. N. MUTENDE

JUDGE

