

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 21 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

MANGATI KUUMA.....ACCUSED

RULING

1. **Mangati Kuuma**, 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 **4th** day of **June, 2012** at **Kikuu Sub-location, Mwitika Division, Mutomo District** in **Kitui County**, jointly with others **murdered Cosmas Kyendi Munyao** (Deceased).

2. At close of the Prosecution's case, the fact of death was established. PW5, **Dr. Patrick Mutuku** conducted a postmortem on the body of the Deceased that was identified by a relative. He formed the opinion that the cause of death was severe burns.

3. PW1 **Kasele Munyao** the wife of the Deceased identified the Accused as one of the persons who pulled him out of their house amidst accusation of having stolen a goat. They led him to where he was burnt as she watched. Her evidence was corroborated by that of PW2 **Mwania Munyao**.

4. In the celebrated case of **Ramanlal Trambklal Bhatt vs. Republic (1957) EA 332** it was held that a *prima facie* case is one which;

“.....A reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence....”

5. This is a matter where eye-witnesses to the act that was committed that resulted into the death of the Deceased have adduced evidence. If the evidence is not challenged then a reasonable court may convict on the evidence given so far. In the premises, I find the Prosecution having established a *prima facie* case against the Accused that requires him to be 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 8th day of September, 2016.

L. N. MUTENDE

JUDGE