



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CRIMINAL DIVISION**  
**CRIMINAL (MURDER) CASE NO. 22 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**EDWARD OKANGA MALALU.....1<sup>ST</sup> ACCUSED**

**MICHAEL MUSANGO.....2<sup>ND</sup> ACCUSED**

**R U L I N G**

**Introduction**

1. The two accused persons named herein above are charged jointly with others not before the Court with the offence of Murder contrary to section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 21<sup>st</sup> day of April, 2013 at Emurembe Village within the County of Vihiga jointly with others not before court, murdered Njomo Ombaka. The accused persons denied committing the offence. The case has been ongoing since 24.03.2013 when the accused persons first appeared before the Deputy Registrar of this Honorable Court pending plea which was taken on 07.05.2013.
2. The prosecution called 6 witnesses in its attempt to prove the case against the accused persons. The doctor did not testify for reasons that even after several adjournments, the prosecution could not avail the doctor to the Court.
3. There were no submissions at the close of the prosecution case. This court has carefully considered the evidence of the 6 prosecution witnesses and has also considered the provisions of the law and in particular the provisions of Sections 203 and 206 of the Penal Code. The Court has also carefully considered the locus classicus of **Bhatt – vs – R [1957] EA 332** on what constitutes a prima facie case.
4. From all the above, I am satisfied that the prosecution has established a prima facie case against the accused persons requiring them to be put on their defence in accordance with section 306(2) of the Criminal Procedure Code. Accordingly, the accused persons are required to defend themselves against the charge facing them. In this regard, they may choose to give sworn or unsworn evidence. If they choose to testify under oath, each one of them may be asked questions both by the state and by the court. However, if they choose to give unsworn evidence, they will not be asked any questions. The third option open to the accused persons is to remain silent and let the Court decide the case on the evidence on record. If they choose to testify, each accused person has a right to call witnesses.
5. I now call upon the accused persons to indicate to the court how they intend to proceed with their

defence.

It is so ordered.

Ruling delivered dated and signed in open court today at Kakamega this 10<sup>th</sup> day of October, 2016

**RUTH N. SITATI**

**JUDGE**

In the presence of;-

.....Mr. Jamsumba(present).....for prosecutor

.....Miss Mahuni (present).....for 1<sup>st</sup> accused

.....Miss Mahuni...Present).....for 2<sup>nd</sup> accused

.....Mr. Okoiti.....Court Assistant.