

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 27 OF 2011 (MURDER)

REPUBLIC PROSECUTOR

V E R S U S

EMILY TAABU MAYABI 1ST ACCUSED

JACKLINE AUMA OUMA 2ND ACCUSED

R U L I N G

1. The two accused persons, Emily Taabu Mayabi and Jackline Auma Ouma are jointly charged with the offence of murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The particulars are that *on the night of 24th and 25th April 2011 at Bwangani village, Nanyeni sub-location in Matungu District of Kakamega County, jointly murdered Paul Nickson Musolo*. They denied the offence and the case has been ongoing.
2. The prosecution called 5 witnesses by whose evidence it was intended to prove that the deceased died and that he died as a result of the unlawful acts or omissions on the part of the accused persons herein.
3. I have given careful consideration to the evidence that has been placed before me by the prosecution and in particular the evidence of **PW5, Dr. John Khawala Ogola** who told the court that the deceased died as a result of asphyxia due to strangulation. I have also taken note of the fact that at this stage, the prosecution does not have to prove its case against the accused persons beyond any reasonable doubt. That standard of proof is for another day.
4. What I have found from looking at the evidence on record is that the prosecution has established a prima facie case against the two accused persons requiring them to be put on their defence. I accordingly proceed to do so.
5. As provided under **section 306 (2)** of the Criminal Procedure Code the accused persons may defend themselves by giving sworn or unsworn evidence or if they so choose, they can keep quiet and let the court decide the case on the evidence that is before it. If they choose to give sworn evidence, they will be subjected to cross-examination by the prosecutor. In each case the accused persons can call witnesses.
6. I now call upon the accused persons to indicate which of the 3 options they will choose and whether they have any witnesses to call.
7. Orders accordingly.

RUTH N. SITATI

JUDGE

Ruling delivered, dated and signed at Kakamega in open court this 5th day of March 2015

In the presence of

Miss Omondi --- For the State

Mr. Shivega ----- For Accused

Mr. Juma ----- Court Assistant