



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CRIMINAL CASE NO. 39 OF 2010

REPUBLIC.....PROSECUTOR

VERSUS

PIUS MUKHWANA.....ACCUSED

RULING

1. The accused person PIUS MUKHWANA is charged with the offence of Murder contrary to **section 203** as read with **section 204** of the **Penal Code**, particulars of the offence being that *on the night of 25th September 2010 at Shiveye Sub-Location in Iguhu Location Ikolomani Division Kakamega South District within Western Province the accused murdered EPHRAIM MALUNGU AMDAKI.*
2. The evidence of the prosecution is circumstantial as none of the witnesses saw the accused person attack the deceased. On the night of 25/09/2010 PW2 saw the deceased's body and started screaming. Neighbours who heard the screams were attracted to the scene. The accused person who is the deceased's cousin and a neighbour is the only one who allegedly did not appear at the scene. According to PW2 since they did not see the accused they went to his house and found him and arrested him on suspicion that he was involved in the incident. PW2 also claimed that bloodstained clothes were found in the accused's house.
3. PW4 testified that she found a panga besides a river in the accused's shamba. She was certain that the panga belonged to the accused because she had seen it with him for a long time and also that at one time, she had borrowed the same from him. She also described the same.
4. PW7 the assistant chief of the area also mentioned that when they went to the accused's house they asked him for his panga but he told them that he did not have it. PW7 confirmed that on the 28/09/2010 she was called and told that the accused's panga had been found.
5. PW8 also asked the accused where his panga was and why he did not come to the scene while people were mourning. This made the people to suspect that the accused might have been involved in the incident. PW9 told the court that the accused always had quarrels with the deceased.
6. All the prosecution witnesses were thus of the view that because of the sour relationship between the accused and the deceased, coupled with the fact that the accused did not appear at the scene of crime when other neighbours answered to the screams and his missing panga though not conclusive were pointers that accused may have been involved in the murder of the deceased.
7. At this stage what the prosecution has to prove is a prima facie case as against the accused person to

warrant his being put on his defence. A prima facie case is one where, if accused does not offer any defence, then the court, properly directing its mind to the evidence before it, could convict. This Court has carefully gone through the entire evidence adduced by the prosecution, and considered the submissions by both learned counsel.

8. In my considered view the Prosecution evidence on record establishes a prima facie case against the accused person. Accordingly the accused has a case to answer and is put on his defence under **Section 306 (2)** of the Criminal Procedure Code. The accused may give either sworn or unsworn evidence. If he gives sworn evidence he will be asked questions by the prosecutor. He may also choose to remain silent and let the court decide the case on the evidence before it. In each case, the accused has a right to call witnesses. I now call upon the accused person to make his election.

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

RUTH N. SITATI

J U D G E

In the presence of

Miss Omondi for State

Mr. Abok (present) for Accused

Mr. Juma Court Assistant