

No. 295/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 21 OF 2012

REPUBLICPROSECUTION

VERSUS

TITUS MUNYAO MUKEIACCUSED

R U L I N G

1. **Titus Munyao Mukei** 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 **6th day of June 2012** at **Kyumoni Village, Katulani Sub-location of Katulani District** within **Kitui County**, with others not before court murdered **Kweta Mukei**
2. At the close of the prosecution's case there was evidence adduced by **PW2, Paul Mukei** who stated that on the material night he was able to see one of the persons who was in company of people who attacked his mother, the deceased herein. He identified the person as the accused herein.
3. **PW3, Mukei Isika** stated that he recognized the voice of one of the person who was urging the rest to order the deceased to open the door as that of his son the accused herein.
4. In the case of **Ramanlal T. Bhatt VR [1957] E.A. 332** -it was stated as follows:-

“A prima facie case is not made out if at the close of the 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 the credibility or weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough; nor any amount of worthless discredited evidence”.

5. Evidence of death was adduced. It is stated that one of the person who was in company of the people who did the actual action of fatally injuring the deceased was the accused. This is evidence that would require the accused being called upon to offer an explanation. In the premises, a *prima facie* case has been established that warrant the accused being put on his defence pursuant to the provisions of **Section 306(2)** of the **Criminal Procedure Code**.

DATED, SIGNED and DELIVERED at MACHAKOS this 3RD day of JUNE, 2014.

L.N. MUTENDE

JUDGE