

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

CRIMINAL CAE NO. 4 OF 2019

REPUBLIC.....PROSECUTOR

-VERSUS-

JACKSON MUSYOKA MWARIRE.....ACCUSED

RULING

1. The accused person herein is charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code** (Chapter 63 of the Laws of Kenya).

2. The particulars of the offence are that on 13th June 2019 at Kisasi area in Ueuweni Market, Twantanju Sub-location, Kathangachini Location, Tharaka-North Sub-County within Tharaka-Nithi County, murdered one Mark Mucunku Nkanga. The accused pleaded not guilty

3. The prosecution called a total of eight (8) witnesses in support of its case against the accused before closing its case on 29th November 2021.

4. This ruling thus seeks to determine whether the prosecution has made out a *prima facie* case against the accused person that would warrant this court to call upon the said accused persons to give their defence. In other words, does the accused persons have a case to answer?

5. The law is well settled by several authorities as to what constitutes a prima facie case. The leading authority is the case of **Ramanlal T. Bhatt -v- Republic [1957] E.A. 332** where the court defined a *prima facie* case as one which a reasonable tribunal properly addressing its mind to the law and evidence, could convict if no explanation is offered by the defence.

6. This court has the duty to evaluate the testimonies of each of the eight (8) prosecution witnesses against the charge of murder that the accused person is facing. In the instant, it is my view that the evidence presented by the prosecution before this court meets the threshold in the case of **Bhatt -v- R (supra)**.

7. At this stage, no reasons need to be given for this finding as this court is yet to hear the side of the story of the accused person and giving reasons would amount to determining the case without giving them an opportunity to be heard (See: **Republic -v- Samuel Karanja Kiria [2009] eKLR**).

8. It is sufficient at this juncture to inform the accused person whether he has a case to answer and give him a chance to be heard. Based on the evidence tendered by the prosecution up to the close of their case, I find that there is sufficient evidence to warrant the accused persons to be put on his defence as charged.

The accused will proceed as provided under **Section 306 of the Criminal Procedure Code** and inform the court whether he wishes to address the court on oath or unsworn. If he opts to address the court on Oath, he will be sworn and after giving evidence he will be cross-examined by the prosecution. If he opts to give unsworn statement, he will not be cross-examined.

Dated, signed and delivered at Chuka this 27th day of January, 2022.

L.W. GITARI

JUDGE