REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NUMBER 9 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

DUNCAN KIPLANGAT MOSONIK.....1ST ACCUSED

JOSPHAT KIPNGETICH LANGAT.....2ND ACCUSED

RULING

1. Duncan Kiplangat Mosonik and Josphat Kipngetich Langat (1st and 2nd Accused respectively) were charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge were that on the 9th day of January, 2018 at Koiyet village, Sugumerga location in Chepalungu sub-county within Bomet County jointly murdered one Sharon Cherotich Kirui.

2. The two accused took plea and denied the charge. Subsequently the trial proceeded before Muya J, who heard 9 prosecution witnesses. I took over the matter and heard the last two prosecution witnesses.

3. At the close of the Prosecution case, the prosecution filed written submissions.

4. At this stage of the proceedings what the court is required to do is to establish whether a *prima facie* case has been established. In the persuasive case of **Ronald Nyaga Kiura Vs. Republic (2018) eKLR** Limo J. stated as follows: -

> ***"It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the Criminal Procedure Code. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person. This is well illustrated in the cited Court of Appeal case of Ramanlal Bhat -VS- Republic [1957] EA 332. At that stage of the proceedings the trial court does not concern itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence."***

5. I am further persuaded by the case of **Republic V Robert Zippor Nzilu (2020) eKLR,** Odunga J held that: -

> ***"That there is a danger in making definitive findings at this stage, especially where the Court finds that there is a case to answer is not farfetched and the reasons for not doing so are obvious. As was appreciated by Trevelyan and Chesoni, JJ in Festo Wandera Mukando VS. The Republic (1980) KLR 103:***
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> ***"we once more draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgement. Where a submission of "no case" is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the count or counts concerned."***

6. I have considered the evidence before me, and the Prosecution's submissions dated 1st March,2022. I have particularly paid keen attention to the evidence taken by my predecessor. I am satisfied without delving further into the analysis of the evidence, that the prosecution has established a *prima facie* case against the Accused.

7. It is my finding that the 1st and 2nd accused have a case to answer. Each is called upon to elect the mode of his defence in accordance with **Section 306 of the Criminal Procedure Code.**

Orders accordingly.

Ruling delivered, dated and signed at Bomet this 29th day of March, 2022.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Mr. Kenduiwo for the Accused, Mr Muriithi for the state and Kiprotich (Court Assistant).