



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NUMBER 51 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

CHARLES KIPKEMBOI KIBET.....ACCUSED

R U L I N G

1. The accused **Charles Kipkemboi Kibet** faces two (2) counts of **Murder contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars of the two counts are as follows;

COUNT NO. 1

“On 15th day of October 2018 at Tabut Village, Visoi Location, Rongai Sub-County within Nakuru County murdered JACKSON ARAP SIGEI (herein after to be referred to as Jackson)”

COUNT NO. 2

“On 15th day of October 2018 at Tabut Village, Visoi Location, Rongai Sub-County within Nakuru County murdered HELLEN CHEMELI (herein after to be referred to as Hellen.)”

2. The accused pleaded **Not Guilty** to both counts.
3. The trial commenced on 23rd September 2019. The prosecution called seven (7) witnesses in support of their case.
4. At the close of the case for the prosecution the issue is whether the prosecution has established a *prima facie* case to warrant the accused being put on his defence.
5. **Section 306 of the Criminal Procedure Code** provides for what the court ought to do; **Close of case for prosecution;**

(1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.

(2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.”

6. The court in the case of **Festo Wandera Mukando vs The Republic (1980) KLR 103** discouraged giving reasons for its findings at this stage, the court stated as follows;

“... We once 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 judgment.

Where a submission of “no case” is rejected, the court should say no more than that it is. It is otherwise where the submissions is upheld when reasons should be given; for then that is the end to the case or the count or counts concerned.”

7. I have considered the evidence before me. I am of the view that a on the evidence before me, a *prima facie* case has been made out against the accused person to warrant his being placed on his defence.

8. **Section 306(2) of the Criminal Procedure Code** will be complied with.

9. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF APRIL, 2022.

MUMBUA T. MATHEKA,

JUDGE.

IN THE PRESENCE OF;

EDNA CA

MS MUMBE FOR STATE

ACCUSED PRESENT