



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**CRIMINAL CASE NO. 11 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**STEPHEN NGUNJIRI WACHIRA.....ACCUSED**

**RULING**

1. This is a ruling on whether there is a case to answer. The accused faces a charge of murder contrary to section 203 as read with 204 of the Penal code to which he pleaded not guilty.
2. At the close of the prosecution's case of twelve(12) witnesses, the defence counsel Ms. Wambui Mwai put in submissions on no case to answer raising several issues.
3. Firstly, it was argued that the evidence of the prosecution was full of contradictions. Secondly, it was submitted that some of the witnesses were high on alcohol and that their judgement on the chain of events would not have been accurate.
4. Thirdly, citing the case of **Turnbull Vs R. 1967 All E.R.**, the defence argued that there was no positive identification of the accused at the scene of crime and as such, it has not been established who killed the deceased.
5. I have carefully perused the evidence of the prosecution witnesses and paid particular attention to those mentioned by the defence as having contradicted each other.
6. In giving my ruling, I wish to state that the Court of Appeal held in the case of **Antony Njue Njeru Vs Republic[2006] eKLR** that:-

*“Taking into account the evidence on record, what the learned Judge said in his ruling on no case to answer, the meaning of a prima facie case as stated in Bhatt's (supra), we are of the view that the appellant should not have been called upon to defend himself as all the evidence was on record. It seems as if the appellant was required to fill in the gaps in the prosecution case. We wish to point out here that it is undesirable to give a reasoned ruling at the close of the prosecution case, as the learned Judge did here unless the court concerned is acquitting the accused person.”*

7. Relying on that case, I hold that it is not necessary for me to state the analysis of evidence herein if I am of the considered opinion that the accused has a case to answer. The holding of the court of Appeal in my view was intended to prevent a scenario where the court would preempt the case of the defence.
8. Having considered the evidence and the defence submissions, it is my finding that the prosecution have established a **prima facie** case against the accused person. I find that the accused has a case to answer and is hereby called upon to give his defence.
9. It is hereby ordered.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 29<sup>TH</sup> DAY OF APRIL, 2021.**

**F. MUCHEMI**

**JUDGE**

**Ruling delivered virtually this 29<sup>th</sup> day of April, 2021 in presence of the accused, his counsel Ms. W.Mwai and the prosecutor Mr. Ondimu.**