

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 5 OF 2016

REPUBLIC

VERSUS

PATRICK MWANGI WANJIKU

KISOI TITO CHERUIYOT.....ACCUSED

RULING

1. The accused person were charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; they were accused of having jointly murdered **FELISTAS MURUGI MAINA** on the 10th day of January, 2016 at Gatugi Village within Nyeri South Sub County within Nyeri County;
2. The accused persons entered a plea of Not Guilty and at the hearing they were at all times represented by Learned Counsel Mr. Njuguna whereas Ms. Gicheha was the Prosecuting Counsel for the State;
3. A total of fifteen(15) prosecution witnesses were called in support of the prosecution's case and at the close of its case both counsel were invited to make submissions on whether the prosecution had made out a case that would necessitate the accused persons to be called upon to defend themselves;
4. Defence counsel stated that he had no submissions to make whereas prosecuting counsel stated she relied on the evidence adduced by the prosecution witnesses and that the evidence was tight enough to have the accused persons placed on their defence.

ANALYSIS

5. The question is whether the prosecution has made out a '*prima facie case*' for the accused persons to answer; the definition of a '*prima facie case*' is well captured in the renowned Court of Appeal case of **Bhatt vs Republic (1957) EA 332** where the court held as follows;

'A prima facie case must mean one where a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.'

6. At this stage, if this court were to find that there is '*a prima facie case*' made out by the prosecution it is not required to give any reasons for reaching such a decision; the reasons would only be requisite if the court were to uphold the submissions on '*no case to answer*';
7. This court has thus evaluated the evidence on record and has directed its mind to the applicable law on the offence; upon applying the same principles as set out in the cited authority **Bhatt (supra)** this court is satisfied that '*the evidence could convict if no explanation is offered by the defence.*' and finds that the prosecution has established a '*prima facie*' case against the accused persons that warrants them being placed on their defence to answer to the charges;
8. For those reasons this court finds that the accused persons have a case to answer; their rights and options will be put to them for election before they present their defence.

Orders Accordingly.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NYERI THIS 24TH DAY OF JUNE, 2021.

HON. A. MSHILA

JUDGE