

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 16 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

EMILIO NJOKA MWANIKI.....ACCUSED

RULING

1. The accused herein was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal code. The particulars of the offence are that on 1.08.2016 at Gatunduri village, Kibugu location, Embu North Sub-County within Eastern Region jointly with others not before the court murdered Martin Muriithi Njue.
2. The accused was arraigned in court on 29.08.2016 and pleaded not guilty. The trial kicked off and the prosecution called a total of five (5) witnesses in support of its case and proceeded to close its case.
3. The defence proceeded to file written submissions and invited this court to find that the prosecution did not present sufficient evidence to warrant the accused person to be put on his defence. It was submitted that there was no evidence that the accused caused the death of the deceased by either hitting him or setting him on fire and thus the elements of the offence of murder had not been proved. Further that the deceased was attacked by a mob and not the accused and that the cause of death was never investigated as the Investigation officer who investigated the case and recorded statements declined to testify and as such, it is not clear why the accused herein was arrested.
4. Reliance was made on the cases of **Republic –vs- Nicholas Wanjohi Gakuya- Nanyuki Criminal Case No. 1 of 2016, Republic – vs James Ogwang Alichu Another - Kakamega Murder Case No. 15 of 2013 and Nyeri Criminal Case No. 20 of 201 - Laban Kipsang Tendet and Solomon Tanui Kipkemoi – vs- the ODP**. It was further submitted that the prosecution did not present evidence as to the existence of malice aforethought as there was no witness who testified as to having heard the accused threaten the deceased.
5. This court has a legal duty, upon close of the prosecution’s case, to make a ruling or a decision on whether an accused person has a case to answer or not. When the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is no evidence that the accused or any one of several accused committed the offence should, 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 (See Section 306(1) of the Criminal Procedure Code).
6. When the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is evidence that the accused person or any one or more of several accused persons committed the offence, the court should proceed to put the accused to his/their defence and whereby the accused is supposed to present evidence in defense (See Section 306(2) of the Criminal Procedure Code). As such, at this stage, this court’s role is to consider the evidence on record and make a determination as to whether the same presents a prima facie case that would warrant this court to call upon the accused to give his defence.
7. Under 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. (See also **Ramanlal Trambaklal Bhatt –vs- R [1957] E.A 332 at 334 and 335**). However, it is trite that, where the court is not acquitting the accused person at the close of prosecutions’ case, there is no need for a reasoned ruling for a case to answer. Reasons should only be given where the submissions of a no case to answer by the accused are upheld and the accused is to be acquitted. (See **Festo Wandera Mukando –vs Republic [1980] KLR 103**).
8. I have considered the evidence tendered by the prosecution in this matter as required of this court and from the entirety of the said evidence, it is my view that the prosecution has made up a prima facie case against the accused person and which requires the accused to be placed on his defence so as to rebut the same. The accused person therefore has a case to answer and is hereby put on his defence.
9. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 29TH DAY OF SEPTEMBER, 2021.

L. NJUGUNA

JUDGE

.....for the Accused

.....for the Republic