



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAROK**

**CRIMINAL CASE NO. 39 OF 2017**

***(CORAM: F.M. GIKONYO J.)***

**REPUBLIC**

**-versus-**

**ISAACK KAGIRI WANJIKU**

**RULING**

***Prima facie case***

[1] The accused herein is charged with the offence of murder contrary to Section 203 as read Section 204 of the **Penal Code**. It is alleged that on 8<sup>th</sup> November 2017 at Oloikirkirai Trading Centre in Narok North Sub-county within Narok County he murdered one **Evaline Rehak**.

[2] The prosecution called nine (9) witnesses in support of their case. The court is now called upon to determine whether or not the prosecution has made out a *prima facie* case against the accused that would warrant this court to call upon the accused to give his defence.

[3] As it was stated in the English Case of ***May vs. O'Sullivan [1955] 92 CLR 654*** :

**“When at the close of the case for the prosecution a submission is made that there is no case to answer, the question to be decided is not whether on the evidence as it stands the defendant ought to be convicted, but whether on the evidence as it stands he could lawfully be convicted. This is really a question of law.”**

[4] The threshold therefore, of a *Prima facie* case is;

**“...one which a reasonable tribunal properly directing its mind to the law and the evidence would convict if no explanation is offered by the defence”. See RAMANLAL BHATT vs. R (1957) EA 332(CA)**

[5] Without making any definite findings, careful consideration of the evidence adduced- circumstantial and medical- reveals a *prima facie* case against the accused person, Accordingly, I place the accused to his defence.

[6] The accused is duly informed of his right to address the court, either personally or by his advocate, to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence. The accused person or his advocate shall now state whether it is intended to call any witnesses as to fact other than the accused person himself.

[7] It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 21ST DAY OF OCTOBER, 2021**

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**F. GIKONYO M.**

**JUDGE**

**In the presence of:**

1. Karanja for DPP
2. Langat for accused
3. Accused present
4. Mr. Kasaso – CA

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**F. GIKONYO M.**

**JUDGE**