



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

HCCR CASE NO. 16 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

AGNES KANGARIA NTIMUTHINGE.....1ST ACCUSED

PRICILLAH KENDI MWANAKE.....2ND ACCUSED

BEN NGUGI KANYARU.....3RD ACCUSED

ROSALINE KAITHI MUTIIRIA.....4TH ACCUSED

MBITI MWARANGE MIRIIGA.....5TH ACCUSED

RULING

1. The five (5) accused persons herein were charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code, Chapter 63 of the Laws of Kenya**.
2. The particulars of the offence as per the information dated 17th September 2018 were that on 13th August 2018 at Mwanyani Location, Tharaka South Sub-County within Tharaka -Nithi County, the said accused persons jointly with others not before court murdered one Peter Nyaga Kieru.
3. The accused persons underwent mental assessment and were all found to be fit to stand trial. They all denied committing the offence and the matter proceeded to trial. The prosecution called a total of eight (8) witnesses before it closed its case on 19th October 2021.
4. This ruling thus seeks to determine whether the evidence adduced by the prosecution falls within the threshold of a *prima facie* case to warrant this court to place the accused persons to their defences. None of the parties opted to put in their submissions at this stage.
5. The question on what constitutes a *prima facie* case has been extensively considered in several authorities. The leading authority is the case of **Ramanlal T. Bhatt -v- Republic [1957] E.A. 332** where the court defined a *prima facie* case as one which a reasonable tribunal properly addressing its mind to the law and evidence, could convict if no explanation is offered by the defence.
6. I have considered the evidence that has been tendered by the prosecution witnesses and it is my view that it has established the ingredients of the offence of murder, which charge the accused persons herein are facing. As such, I hold that the prosecution's case meets the threshold of a *prima facie* case as set out in in the case of **Bhatt -v- R** which I have cited above.
7. At this stage, this court need not give elaborate reasons for its finding as it is yet to hear the side of the story of the accused persons and giving reasons would amount to determining the case without giving them an opportunity to be heard (See: **Republic -v- Samuel Karanja Kiria [2009] eKLR**).
8. It is sufficient at this juncture to inform the accused persons that they have a case to answer and give them a chance to be heard. I therefore hold that the accused have a case to answer and will proceed as provided under **Section 306 (2) and (3) of the Criminal Procedure Code (Cap 75 of the Laws of Kenya)**. It provides:-

“ (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.

(3) If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon him to enter upon his defence.”

DATED, SIGNED AND DELIVERED AT CHUKA THIS 25TH DAY OF NOVEMBER 2021.

L.W. GITARI

JUDGE