



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 1 OF 2015

REPUBLIC.....PROSECUTION

VERSUS

JOHN GITONGA NYAGA.....1ST ACCUSED

JAMES NGARE NYAGA.....2ND ACCUSED

DEVID NJIRU NYAGA.....3RD ACCUSED

ALFRED KARIUKI NJUKI.....4TH ACCUSED

CRYSTUS MUREITHI MUNYI.....5TH ACCUSED

RULING

1. The accused persons were charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence being that; on the 26th day of December, 2014 at Kune Sub-Location, in Mbeere North Sub- County within Embu County jointly with others not before the court murdered Moses Nthiga Njeru.
2. The accused persons were arraigned in court on 20.01.2015 and they pleaded not guilty to the charge of murder and a plea of not guilty entered.
3. The matter proceeded to trial and the prosecution called a total of six (6) witnesses after which the prosecution closed its case.
4. This court has a duty to make a ruling upon the conclusion of the prosecution's case on whether the accused persons herein have a case to answer or not. When the evidence of the prosecution witnesses has been concluded and the court has formed an opinion that there has not been presented evidence that the accused committed the offence should after hearing any arguments from either the prosecution or advocate of the accused person enter a finding of not guilty. (See **Section 306(1) of the Criminal Procedure Code**).
5. On the other hand, should the court hold the opinion that there has been adduced sufficient evidence to warrant the accused to be placed on his defence, the court then should proceed to put the accused person on his defence. (See **section 306(2) of the Criminal Procedure Code**). At this point, this court's role is to consider the evidence on record and make a determination whether a *prima facie* case has been established to warrant the accused persons to be placed on their defence.
6. Section 211 of the Criminal Procedure Code stipulates that a *prima facie* case is established where the evidence adduced by the prosecution is sufficient for the court to return a guilty verdict if no other explanation is offered by the accused person. This was the court's view in the case of **Ramanlal Trambaklal Bhatt –vs- R [1957] E.A 332 at 334 and 335**).
7. It is trite that, the reasons should only be given where the submission of no case to answer by the accused is upheld and the accused is to be acquitted. In the case of **Festo Wandera Mukando v Republic [1980] KLR 103** the court held that there is no need for a reasoned ruling for a case to answer.
8. This court has considered the evidence adduced by the prosecution in this matter and from its entirety; the prosecution has established a *prima facie* case against each of the accused persons herein.
9. I hereby order that they be placed on their defence.

DELIVERED, DATED AND SIGNED AT EMBU THIS 24TH DAY OF NOVEMBER, 2021.

L. NJUGUNA

JUDGE

.....*for the Accused*

.....*for the Respondent*