



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. 32 OF 2018

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

WALLACE KANIARU GITITU.....ACCUSED

RULING

1. **WALLACE KANIARU GITITU** is charged with the offence of murder of **Mary Wambui Muraya** deceased. He pleaded not guilty. The prosecution called 7 witnesses before closing its case.

2. The court, at this stage, is considering whether the accused has a case to answer. A case to answer was defined in the holding of the case **REPUBLIC VS. JOSEPH SHITANDI & ANOTHER (2014) eKLR** as follows:-

“A case to answer is a case where if the accused keeps quiet, the evidence of the prosecution should be such that a conviction will result.”

3. The procedure in determination whether indeed, the accused has a case to answer was discussed in the case **REPUBLIC VS. STEPHEN CHOMBA KAMAU (2021) eKLR** thus:-

“REPUBLIC -V- SAMUEL KARANJA KIRIA (2009) eKLR Justice J.B Ojwang (as he then was) stated:-

‘The question at this stage is not whether or not the accused is guilty as charged but whether there is cogent evidence of his connection with the circumstances in which killing of deceased occurred. That the concept of prima facie case dictates as a matter of law that an opportunity created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled ... The Court of Appeal in Criminal Appeal No. 77/2006 expressed that too detailed analysis of evidence stage at no case to answer stage is undesirable if the court is going to put accused on his defence as too much details in the trial court’s ruling could then compromise the evidentiary quality of the defence to be mounted.’”

4. The evidence adduced by the prosecution suffices for the accused to be informed he has a case to answer. He is therefore informed he has a right to address the court as provided under **Section 306(2)** of the Criminal Procedure Code. Accordingly, the accused is informed that he has a right to address the court either personally or by his advocate or to give evidence on his own behalf or to make unsworn statement and to call witnesses in his defence. The accused is now requested to make his election.

RULING DATED AND DELIVERED AT KIAMBU THIS 16TH DAY OF DECEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : **Maurice**

For DPP : **Ms. Kathambi/Kasyoka present**

For Accused :- **Mr. Njehu present**

Accused : **Wallace Kaniaru Gititu present**

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE