



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 79 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

MARTIN GITUMA KINOTI.....ACCUSED PERSON

RULING

Case to answer

[1] As a matter of law, upon close of the prosecution's case, the court should determine whether or not the prosecution has established a prima facie case against the accused as to call upon him to enter his defence. This is not merely mundane procedure but a major step in the trial which ensures that a person does not continue to suffer prosecution unless there is sufficient evidence to support the charge. The procedure is geared towards protection of right of the accused to a fair trial and presumption of innocence.

[2] In this exercise Section 306 of the Criminal Procedure Code is relevant; it provides that:-

306. (1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, 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.

(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.

[3] What is a *prima facie* case? A *Prima facie* case has been said to be;

“...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”.[\[1\]](#)

[4] I will apply the stated test of the law. The accused person has been charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code CAP 63 of the Laws of Kenya. The prosecution closed its case on 18th December 2019; after having called seven (7) witnesses. Counsel for the state intimated that they will not submit on no case to answer. Counsel for the accused person was to file written submissions within 30 days from 18/12/2019 but at the time of writing this Ruling, none had been filed. Nevertheless, upon consideration of the evidence adduced by the prosecution, there is a *prima facie* case established against the accused. Accordingly, the accused is hereby placed on his defence. The accused person has been 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 or his advocate is required to state whether it is intended to call any witnesses as to fact other than the accused person himself. Section 306 of the CPC complied with. It is so ordered.

Dated, signed and delivered in open court this 10th day of March 2020

F. GIKONYO

JUDGE

IN PRESENCE OF

Omari for Ndubi for accused

M/s Nandwa for DPP

Accused present

F. GIKONYO

JUDGE
