REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

HIGH COURT CRIMINAL MURDER: NO 12 OF 2014

(Consolidated with Murder 22 of 2014)

REPUBLIC.....PROSECUTOR

VERSUS

GEOFFREY WACHIRA MUTHONI.....1ST ACCUSED

HENRY MUNENE MUGURE.....2ND ACCUSED

SAMUEL MURIMI WANDIA.....3 RD ACCUSED

JOSEPH NJAGI MURIITHI.....4TH ACCUSED

RULING:

1. The FOUR accused are jointly charged with the offence of murder contrary section 203 as read with section 204 of the Penal code. The particulars of the offence are that on the 9th of September, 2013 at Mahigaini village, Tembere Location within Kirinyaga County unlawfully murdered Titus Mwangi Muiruri.

2. The accused persons denied the charge, the prosecution called that twelve witnesses in support of the case and in an endeavor to prove the charge against the accused persons.

3. The prosecution then closed their case and this is a ruling as to whether the accuseds' persons have a case to answer.

4. I have considered all the evidence adduced, this court is supposed to determine whether the accused should be called upon to give their defence as provided under **Section 306 of the Criminal Procedure Code** which provides as follows;

Section 306 (1) (2) (3) of Criminal Procedure Code provides that**;**

> ***"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 anyone 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. "***

> ***"When the evidence of the prosecution has been concluded the court if it considers that there is evidence that the accused person or anyone or more of several or more 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 unsworn statement or 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 that fact."***

> ***"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 unsworn statement or to adduce evidence the court shall call upon him to enter upon his defence."***

5. I have considered all the evidence adduced by the prosecution at the close of the prosecution case.

6. In Criminal cases the burden is on the prosecution to establish a prima facie case against the accused. The test of a prima facie case was laid down in the case of**; *Ramanlal Trambaklal Bhatt -versus- Republic (1957) EA* 332** where it was stated that a prima facie case is one on which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.

7. A Prima facie case is defined in Black's Law Dictionary 10th Edition as:-

> ***" sufficient to e stablish a fact or raise a presumption unless disapproved or reverted based on what seems to be true on a first examination even though it may later be proved to be untrue. At first sight on first appearance but subject to further evidence or information….."***

It further defines a prima facie case as;

> **1.** The establishment of a legally required rebuttal presumption.
>
> **2.** A parties production of enough evidence to allow it to infer the fact at issue and rule in parties favour.

In Republic -versus- Jagijwan M. Patel and others (1) T.T.R 85 the court stated;

> ***" ……. All the court has to decide at close of evidence in support of the charge is whether a case is made out against the accused just sufficiently to require him to make his defence it may be a strong case or it may be a weak case. The court is not required at this state to apply its mind in deciding finally whether the evidence is worthy of credit whether, it believed, it is weighty enough to prove the case conclusively, beyond reasonable doubt. A ruling that there is a case to answer would be justified, in my opinion, in a border line case where the court though not satisfied as to the conclusiveness of the prosecution evidence, is yet of the opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conviction."***

8. At this stage what the court is required to do is to consider is whether there is sufficient evidence that establishes a prima facie case to w arrant the accused person to be put on their defence. I have considered the evidence adduced in this case, I have also considered all the submissions made by the counsels on record for the accused persons'.

9. The court at this stage is not required to give reasons, while making the finding that a prima facie case has been established but only to weigh the evidence in its entirety and make a finding.

10. I have considered the evidence tendered by the prosecution and I find that a prima facie case has been established to warrant the accused persons to be placed on their defence as charged with the offence of murderer Contrary to Section 203 as read with **Section 204 of the Penal Code** and I order that: **Under Section 306 (2)** the accused are informed of their right to address the court either personally or by their advocate or to give their evidence each on his own behalf or to make unsworn statement and call witnesses in their defence.

11. They shall state whether they intend to call any witnesses as to the fact other than their own testimonies themselves.

Dated at Kerugoya this 23rd day of July 2020.

L.W. GITARI

JUDGE