



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 28 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

MARK MUNGATHIA.....1ST ACCUSED

DAVID MAKENDA MURIIRA.....2ND ACCUSED

RULING

1. The accused herein have been charged with murder contrary to **Section 203 as read with Section 204 of the Penal Code CAP 63 of the Laws of Kenya**. The particulars of the offence are that on the 3rd day of July 2013 at Mbaranga sub-location in Tigania East District within Meru County jointly murdered **Michael Kirimunya**.

2. The prosecution closed its case on 17th July, 2019. At this point, this court is tasked to determine whether or not the prosecution has established a prima facie case against the accused as to call upon him to enter his defence.

3. This matter was canvassed by way of written submissions. The accused submitted that the evidence adduced by the prosecution is not sufficient to place them on their defence. Since there was no eye witness, the accused could not be placed at the scene and the axe recovered was not linked to the death of the deceased. They relied on the cases of **Republic v Hussein Muhamed Abdi [2016] eKLR** and **Joseph Muruki v Republic Criminal Appeal No. 140 of 2014**.

4. **Section 306 of the Criminal Procedure Code** provides that:-

“(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.”

5. This exercise is not merely mundane ritual; it is an essential part of criminal trial, for it ensures that no one continues to stand trial unless a *prima facie* case has been established against him at the close of the prosecution’s case. This requirement is founded upon the right to fair trial and gives effect to the presumption of innocence of the accused at all stages of trial.

6. A *Prima facie* case is:-

“...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”. See RAMANLAL BHATT vs. R (1957) EA 332(CA)

7. During the hearing the prosecution called four (4) witnesses. Upon careful consideration of the evidence adduced, I find there is evidence that supports the charge against the accused. Accordingly, I find that the accused has a case to answer and place him to his defence.

8. The accused be 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 to state to the court whether it is intended to call any witnesses other than the accused person himself.

Dated, signed and delivered in open court this 29th day of July, 2019

.....

F. GIKONYO

JUDGE

IN PRESENCE OF

Namiti for state

Mrs. Ntarangwi for accused

Accused – present

.....

F. GIKONYO

JUDGE