



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KABARNET**

**CRIMINAL CASE NO. 65 OF 2017**

**REPUBLIC.....PROSECUTOR**

**=VERSUS=**

**ZAKAYO KIPKEMEI KIPTIM.....ACCUSED**

**RULING ON CASE TO ANSWER**

1. I have considered that a trial Court is under a duty, as held by the Court of Appeal in ***Murimi v. R*** (1967) EA 542, to acquit an accused if the Prosecution “*failed to make out a case sufficient to require the accused to enter a defence*” and further that such a case is made out when a prima facie case is established being “*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.*” See ***Ramanlal T. Bhatt v. R*** (1957) EA 332, 335.

2. However, the evidence presented by the Prosecution, without exhaustive discussion of the merits so as not to prejudice the fair trial of the case as counseled by ***Kibera Karimi v. R*** (1979) KLR 36, and ***Festo Wandera Mukando v. R*** (1976 – 80) KLR 1626, 1631, I find that the Prosecution has established a prima facie case.

3. The accused will be called to his defence in accordance with section 306 of the Criminal Procedure Code.

*Order accordingly.*

**DATED AND DELIVERED THIS 31<sup>ST</sup> DAY OF OCTOBER 2019.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

M/S Terer & Co. Advocates for the Accused.

Ms. Macharia, Ass. DPP, Counsel for the State.