

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO 97 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL MAINGI SILA.....ACCUSED

RULING

1. The accused **DANIEL MAINGI SILA** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which were that on 1st October, 2014 at Kayaba slums in Industrial Area within Nairobi County murdered **REBECCA MWENDE KIIO**.
2. He pleaded not guilty to the said charges and to prove its case the prosecution called a total of nine (9) witnesses and at the close of the prosecution case it was submitted that a prima facie case had been proved against the accused.
3. On behalf of the accused it was submitted that the prosecution failed to establish a prima facie case against the accused person and its case was based on uncorroborated evidence of PW1, PW2 and PW4. It was submitted that there was no evidence entered to tie the accused to the scene of crime.
4. At this stage, the issue is not whether or not the prosecution has established a case against the accused person beyond reasonable doubt but whether a case has been made to justify calling upon the accused person to offer an explanation as was stated in the case of **REPUBLIC v JAGJIVAN M. PATEL & Others (1) TLR** as follows:-

“All the court has to decide at the close of the evidence in support of the charge is whether a case is made out against the accused just sufficiently to require him to make a defence, it may be a strong case or a weak case. The court is not required at this stage to apply its mind in deciding finally whether the evidence is worthy of credit or whether if 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.”

5. I have taken into account the evidence of PW1 and PW4 and without saying much thereon so as not to compromise the accused defence find and hold that a prima facie case has been established against the accused person to enable the court put him on his defence which I hereby do. The accused shall with the advice of his defence elect how he intends to defend himself.

DATED, SIGNED and DELIVERED at Nairobi this 24th day of January, 2018

.....

J. WAKIAGA

JUDGE

In the presence of:-

Mr. Meroka for the State

Mr. Amutala for the accused

Accused present

Court clerk Karwitha