



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

HIGH COURT CRIMINAL CASE NO. 24 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

STANLEY KARIUKI WALUGORO ALIAS KARISH...ACCUSED

RULING

1. The Accused **STANLEY KARIUKI WALUGORO** alias **KARISH** 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 the 28th day of March, 2014 at Mukuru Kwa Njenga village in Embakasi Division within Nairobi County murdered **JOSEPH MUTISO MUTUKU**.

2. He pleaded not guilty and to prove its case the prosecution called a total of five (5) witnesses and at the close of the prosecution it was submitted on behalf of the accused that the prosecution failed to call crucial witnesses including the younger brother of PW1 and one Rasta in whose house the deceased was allegedly beaten and therefore the court should make an adverse inference that the said witnesses if called could not have supported the prosecution case in support of which the case of **JAMLECK MWANIKI NJURURI v REPUBLIC High Court at Meru Cr. Appeal No. 3 of 2010** was submitted.

3. It was further submitted that the alleged death declaration made by the deceased in the presence of PW1 was not corroborated and the court was invited to exercise caution thereon as stated in **REPUBLIC v PETER MBURU MUTHONI [2005] eKLR**.

4. The prosecution opted to make no submissions but relied upon the evidence on record.

5. 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.”

6. I have taken into account the evidence tendered herein and in particular evidence of PW1 and PW3 and without saying much thereon so as not to compromise the defence likely to be offered by the accused person find and hold that a prima facie case has been made by the prosecution to enable the court put the accused on his defence which I hereby do.

7. The accused is therefore advised of his rights under **Article 50** of the Constitution and **Section 306** of Criminal Procedure Code and is called upon through the legal advice of his Advocate to select how he intends to defend himself.

DATED, SIGNED and DELIVERED at Nairobi this 22nd day of January, 2018.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Meroka for the state

Mr. Oduor for the accused

Accused present

Court clerk: Karwitha