



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**CRIMINAL CASE NO. 34 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**PAUL MURIUKI M'TWARICHIU.....1<sup>st</sup> ACCUSED**

**DOUGLAS MUGAMBI KIRIMI.....2<sup>nd</sup> ACCUSED**

**RULING**

**1. PAUL MURIUKI M'TWARICHIU (1<sup>st</sup> accused) and DOUGLAS MUGAMBI KIRIMI (2<sup>nd</sup> accused) are charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. They pleaded not guilty. At the trial before closing it's case the prosecution called five witnesses. This court's Ruling is in accordance with the Provisions of Section 306 (1) and (2) of the Criminal Procedure Act. Those sub Sections provide:**

***(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.***

**2. In the case REPUBLIC - V- JOSEPH SHITANDI & ANOTHER [2014]eKLR the Judge considering whether the accused, had a case to answer, after the closure of the prosecution's case stated:**

***“A case to answer is a case where if the accused keeps quiet, the evidence of the prosecution should be such that a conviction will result.”***

**3. At this stage of the trial the prosecution is required to prove on a prima facie basis a case against the accused. In other words the prosecution should adduce evidence that is sufficiently strong for the accused to be called to answer. That is that the prosecution should adduce sufficient evidence which requires to be overturned by rebutting evidence of the accused.**

4. The deceased, in this case, namely **SAMWEL MURIGI MAGANJU** died at the age of 17 years. The circumstances that led to his death were narrated by his father and mother.

5. The parents in evidence testified that their deceased's son was picked from their home on 29<sup>th</sup> September, 2014 at 11p.m. by a group of youths. Later between 12.00 and 12.30a.m. He was returned to his parent's home having very serious injuries. He later that night succumbed to those injuries and died.

6. The person who saw those youths who collected the deceased from his parents home was the deceased's father Joseph Maganju Murugi. The father stated:

***“Second accused Douglas Mugambi, I did not see him the night we (sic) when they picked Samuel (deceased). I only saw the second accused the following day... The second accused is charged because it was alleged he was in the group that assaulted. Samuel deceased.”***

7. Again later when the deceased's father was cross-examined reconfirmed that the second accused was not in the crowd of youths who collected the deceased, on the night in question. This is what he stated:

***“I recognised some of them. I did not see the second accused... I did not see the second accused in that group.”***

8. Even after the deceased was taken home after being injured his father said of the group of youths who brought the deceased. thus:

***“I still did not see the second accused.”***

9. That was the totality of the prosecution's evidence against the 2<sup>nd</sup> accused. In this court's view there is no evidence that the 2<sup>nd</sup> accused committed the offence of murder. The prosecution has failed to prove a prima facie case which requires to be rebutted by the 2<sup>nd</sup> accused.

10. This court is however satisfied that the evidence of the prosecution suffice for the 1<sup>st</sup> accused to be called upon to defend himself.

11. The orders, therefore, of this court is are follows:

**(a) The court hereof records a finding of not guilty against DOUGLAS MUGAMBI KIRIMI.**

**(b) The court find that PAUL MURIUKI M'TWARICHIU has a case to answer and he is informed that he has a right to address the court, either personally or by his advocate and to give evidence on his own behalf, or to make unsworn statement, and to call witnesses in his defence.**

**(c) Security document of the surety who stood surety behalf of Douglas Mugambi Kirimi shall henceforth be released to that surety.**

**Dated and Delivered at Nanyuki this 21<sup>st</sup> February 2018**

**MARY KASANGO**

**JUDGE**

**Coram**

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

1<sup>st</sup> Accused: Paul Muriuki M'twarichiu

2<sup>nd</sup> Accused: Douglas Mugambi Kirimi

For accused.....

For state: .....

Language .....

**COURT**

Ruling delivered in open court

MARY KASANGO

**JUDGE**