



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

CRIMINAL CASE NO. 59 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

BENSON NDEGWA KAMAU.....ACCUSED

RULING

INTRODUCTION

1. The accused **BENSON NDEGWA KAMAU** 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 night of 26th day of December 2014 at Dandora Phase 4 in Njiru Sub-county within Nairobi County murdered **MARGARET NJERI MUCHOKI**.

2. He pleaded not guilty to the said charge and to prove its case the prosecution called a total of nine (9) witnesses and at the close of the prosecution case the defence opted not to make any submission while on behalf of the prosecution it was submitted that a *prima facie* case had been established to enable the court place the accused on his defence. It was submitted that the accused was placed at the scene and was thereafter positively identified at an identification parade.

3. 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.”

4. From the evidence tendered and in particular the evidence of **PW3 – EMILY WANJIRU KINUTHIA**, **PW4 BETH WANJIRU MORIA** and **PW6 MOSES MWANGI** I am satisfied and hold that a *prima facie* case has been established to enable the court put the accused on his defence which I hereby do. The accused is therefore advised of his rights under **Section 306** of the **Criminal Procedure Code**.

DATED, SIGNED and DELIVERED at Nairobi this 20th day of April, 2018

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Meroka for the State

Mr. Juma for Oduor for the accused

Accused present

Court clerk Paul