



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 50 OF 2013

REPUBLIC.....PROSECUTOR

Versus

JUDITH KAWAWA MUGA.....1ST ACCUSED

DENNIS MUTUMA.....2ND ACCUSED

GLADYS KARANGI.....3RD ACCUSED

RULING

Case to answer

[1] The prosecution closed its case on 9th July, 2018. I now ought to determine whether the prosecution has established a prima facie case against the accused persons as to be called upon to enter on their defence. See section 306 of the Criminal Procedure Code which provides that:-

“(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.

(3) If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon him to enter upon his defence.”

[2] This exercise is not merely mundane ritual; it is an essential part of criminal trial, for it ensures that no one continues to stand trial unless a *prima facie* case has been established against him at the close of the prosecution’s case. The requirement is enables realization of the right to fair trial and gives effect to the presumption of innocence of the accused at all stages of trial.

[3] what is a *Prima facie*? It is:-

“...one which a reasonable tribunal properly directing its mind to the law and the evidence would convict if no explanation is offered by the defence”. See RAMANLAL BHATT vs. R (1957) EA 332(CA)

[4] Eight witnesses gave evidence for the prosecution in support of murder charges the accused are facing. And upon careful perusal of the said evidence adduced, there is a *prima facie* case established against the accused. Accordingly, the accused are called upon to enter their defence. They have been informed of the right to address the court, either personally or by advocate, to give evidence on own behalf, or to make an unsworn statement, and to call witnesses in their defence. Now the accused or his advocate shall state to the court whether it is intended to call any witnesses other than the accused person. It is so ordered.

Dated, signed and delivered in open court at Meru this 31st day of July 2018

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F. GIKONYO

JUDGE

In the presence of:

Mr. Abubakar for accused person

Mr. Namiti for State

Accused 1 - I understand Kiswahili

Accused 2 – I understand Kiswahili

Accused 3 – I understand Kiswahili

F. GIKONYO

JUDGE