



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**HIGH COURT CRIMINAL CASE NO. 63 OF 2015**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**CORNELIUS MUTEMI alias DAVID MUTIEMI.....ACCUSED**

**RULING**

1. The accused **CORNELIUS MUTEMI** alias **DAVID MUTIEMI** 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 7<sup>th</sup> day of June, 2015 at Mathare area in Starehe Sub County within Nairobi County murdered **NEWTON KIMEU NGUTHU**.

2. He pleaded not guilty and to prove its case against the same, the prosecution called eight witnesses who testified on oath against the accused and at the close of the prosecution case when called upon to make submissions on whether the prosecution had made up a case against the same to enable the court put him on his defence the same opted not to make any submissions.

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 before me and in particular the evidence of PW2 and PW4 Dr. Patrick Mutuku and being alive to the accused persons constitutional right under **Article 50 (2) (i)** I am satisfied and find that the prosecution has made up a prima facie case against the accused to enable me which I hereby do, put the same on his defence. The accused is therefore informed of his rights under Section 306(2) of Criminal Procedure Code.

DATED, DELIVERED and SIGNED at Nairobi this 28<sup>th</sup> day of February, 2017

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**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Mrs. Kinoti for the State*

*Mr. Oloo for Mr. Ogada for the accused*

*Accused present*

*Tabitha court clerk*