



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

**CRIMINAL CASE NO. 10 OF 2016**

**REPUBLIC .....PROSECUTOR**

*Versus*

**JOHN MATHENGE .....ACCUSED**

**RULING**

1. The accused **JOHN MATHENGE** was charged with the offence of murder **Contrary to Section 203 as read with Section 204 of the Penal Code**. He pleaded not guilty.

2. The prosecution called five witnesses and concluded submitting its evidence and closed its case. This calls upon this court to consider whether the accused has a case to answer as provided under **Section 306** of the **Criminal Procedure Code Cap 75**. In the case **REPUBLIC – V- JOSEPH SHITANDI & ANOTHER [2014] eKLR** the prosecution having closed its case the Judge in considering whether the accused had a case to answer 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.”*

At the close of the prosecution’s case, therefore, the court if it finds that the prosecution’s evidence could not lead to a conviction, then the accused should be acquitted. If however the court finds that the prosecution’s evidence suffices then the accused will be called to defend himself.

3. In this case I am satisfied that the evidence of the prosecution does suffice for the accused to be called upon to defend himself. Accordingly as per **Section 306 (2) of Cap 75** the accused 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. The accused is now called upon to make his election on how he shall present his defence.

**Dated and Delivered at Nanyuki this 20<sup>th</sup> JUNE 2017**

**MARY KASANGO**

**JUDGE**

**Coram**

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Accused: John Mathenge

For accused.....

For state: .....

Language .....

**COURT**

Ruling delivered in open court

**MARY KASANGO**

**JUDGE**