



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CRIMINAL DIVISION
CRIMINAL CASE NO. 34 OF 2014

REPUBLICPROSECUTOR

VERSUS

ERICK OMONDI OTIENO.....ACCUSED

RULING

1. The accused person **MR. ERICK OMONDI OTIENO** alias **JALWENY** 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 8th October, 2013 in Mwiki Area Kasarani District within Nairobi County murdered **REUBEN ODUOR OYERO**.
2. He pleaded not guilty to the said charges and to prove its case the prosecution called a total of fourteen (14) witnesses and at the close of the prosecution case, the accused through his advocate on record opted not to submit whether the prosecution had made out a case to enable the court place the accused on his defence.
3. On behalf of the prosecution it was submitted that the State had made out a prima facie case against the accused person who was positively identified by PW12 and PW3 as the one who entered the motor vehicle wherein the deceased was found.
4. 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.”

5. From the evidence tendered by the prosecution and without going into the details therein and in

particular the evidence of PW1, PW3, PW5 and PW12 I am satisfied and find that the prosecution has made out a prima facie case to enable the court place the accused on his defence which I hereby do.

6. The accused person is advised on his rights under **Section 306** of the **Criminal Procedure Code** and is called upon to elect how he intends to defend himself.

DATED, DELIVERED and SIGNED at Nairobi this **29th** day of **June**, 2017.

.....

J. WAKIAGA

JUDGE

In the presence of:-

Mrs. Kinoti for the State

Mr. Tuli for Mr. Wamwayi for the accused

Accused present

Tabitha court clerk