

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO 94 OF 2011

REPUBLIC PROSECUTOR

VERSUS

TIMOTHY KIBOGO CHOCHI.....ACCUSED

RULING

1. The accused **TIMOTHY KIBOGO CHOCHI** 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 28th November, 2011 at Pipeline Estate in Nairobi area within Nairobi County murdered **JESSE MBUGUA KARANJA**.

2. He pleaded not guilty to the said charge and to prove its case the prosecution called a total of eight witnesses and at the close of the prosecution case the defence opted not to make any submission as to whether the prosecution had made up a prima facie case.

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 without saying much at this stage having taken into account the evidence of **PW1, PW3** and **PW7 Dr. PETER NDEGWA** I am satisfied that the prosecution has made up a prima facie case against the accused person to enable the court put the accused person on his defence which I hereby do. The accused is therefore advised of his right under Section 306 of Criminal Procedure Code.

DATED, DELIVERED and SIGNED at Nairobi this 25th day of July, 2017.

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J. WAKIAGA

JUDGE

In the presence of:-

Mrs. Kinoti for the State

Miss Omungala for the accused

Accused present

Tabitha court clerk