



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT CRIMINAL CASE NO 49 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

JOHN HENRY ALUBALE OMULIEBI.....ACCUSED

RULING

1. The accused **JOHN HENRY ALUBALE OMULIEBI** pleaded not guilty to the charge of murder contrary to Section 203 as read with Section 204 of the Penal Code the particulars of which were that on the 7th day of April, 2013 at Huruma Madoga in Nairobi County murdered **ALLAN EZIANU MUGAZIA**.

2. To prove its case, the prosecution called a total of Nine (9) witnesses and at the close of the prosecution case, the accused through his advocate on record and the state through the prosecuting counsel opted not to make a submission on whether the accused had a case to answer and left it upon the court to make a ruling thereon.

3. At this stage the court is only required through the principles as stated in **REPUBLIC Vs JAGGIVA M. PATEL & OTHERS (1) TLR (R) 85** 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 his defence.....”

4. Being alive to the principle expressed by the Court of Appeal in **ANTHONY NJUE NJERU vs REPUBLIC CRIMINAL APPEAL NO. 77 OF 2006** that too much detailed an analysis of the evidence at the stage of no case to answer stage is undesirable, if the court is going to put the accused to his defence as too much details in the trial court’s ruling could then compromise the evidentiary quality of the defence to be mounted and having looked at the evidence of **PW1 ROSE NJOKI NJOROGE, PW2 DAVID KEYA NYANGWESO, PW6 FREDRICK OTIENO JUMA and PW8 DR. ODUOR JOHANSEN**, I am satisfied that a prima facie case has been established by the prosecution to enable the accused be placed on his defence in accordance with the provisions of Section 306(2) of the Criminal Procedure Code.

5. The accused person shall therefore through the legal advice of his advocate on record choose how he intends to defend himself and it is so ordered.

DATED, DELIVERED and SIGNED at Nairobi this 23rd day of March, 2016.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Mwenda for the state

M/s Odembo for the accused

Accused present

Tabitha court clerk