



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CRIMINAL CASE NO. 106 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**EDWARD EMUSINGE NANDUKULE.....1<sup>ST</sup> ACCUSED**

**JOEL KIMATHI KILAKU.....2<sup>ND</sup> ACCUSED**

**RULING**

Edward Emusinge Nandukule, 1<sup>st</sup> accused, and Joel Kimathi Kilaku, 2<sup>nd</sup> accused, are charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 24<sup>th</sup> day of October 2014 at Kasarani area in Kasarani District within Nairobi County they murdered Wilberforce Wamori Wakaba (hereinafter “the deceased”). Each accused pleaded not guilty to the charge. Both accused persons are represented by Mr. Muchiri and Mr. Webale, advocates.

The prosecution closed its case after calling nine (9) witnesses. This court is required at this stage of the trial to make a finding as to whether the evidence so far presented by the prosecution establishes a prima facie case so as to call upon the accused persons to give evidence in their defence. The threshold to be met by the prosecution is not as high as proving the case beyond reasonable doubt. As stated in **R. v. Jagjivan M. Patel & Another 1, TLR 85:**

**“All the court has to decide at the close of evidence 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 it may be 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 conclusiveness of the prosecution evidence, is yet of opinion that the case made out one which on full consideration might possibly be thought sufficient to sustain a conclusion.”**

The brief facts of the case for the prosecution is that on 24<sup>th</sup> October 2014 the deceased, who was at the time running a business dealing with scrap metal, went to Githurai within Nairobi County to collect scrap metal. Around noon on that day he called his wife Mary Muthoni, PW1, and informed her that he had been arrested by people who claimed to be police officers from the Directorate of Criminal Investigations on allegations of driving a vehicle bearing fake registration numbers and for being in possession of copper wire. The deceased told Mary that the said officers had assaulted him while demanding money. The deceased is alleged to have been released after giving the said officers Kshs 15,000 and the copper wire. The deceased complained to Mary of having headache after this incident. He collapsed on 30<sup>th</sup> October 2014 at an Equity Bank Agent where he had gone to withdraw some money. He was pronounced dead on arrival at Marura Hospital in Mathare North. The cause of death as testified by Dr. Oduor Johansen was due to swelling in the brain as a result of a possible blunt trauma on the head. The two accused persons were arrested in connection with assaulting the deceased and charged with this offence.

I have carefully examined and analysed all the evidence of the nine (9) prosecution witnesses and at this

stage of the trial I find that the prosecution has established a prima facie case against each of the accused persons. Consequently, I find that each of the accused persons has a case to answer and shall be placed on his defence.

Under the provisions of section 306 (2) of the Criminal Procedure Code, this court hereby informs the accused persons of their right to inform this court how they wish to give their evidence, whether by taking oath or without taking oath. They have been informed of their right to call witnesses in their defence and to inform this court how many witnesses they wish to call. Orders shall issue accordingly.

**Dated, signed and delivered in open court this 26<sup>th</sup> May 2016.**

**S. N. MUTUKU**

**JUDGE**