

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 60 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

GEORGE NJOROGE NDUNGU.....ACCUSED

RULING

George Njoroge Ndungu referred to in this ruling as the accused was charged with the murder of Michael Kiberu Ndungu contrary to section 203 read with section 204 of the Penal Code. It is alleged that the murder took place on 20th July 2011 at Mukurwe Village in Gatundu within Kiambu County. Nine (9) witnesses testified for the prosecution. I took over the case after five (5) witnesses had testified before Honourable Lady Justice Florence Muchmi (Justice Muchemi). I took evidence of four (4) witnesses. Both the prosecution and the defence agreed to proceed with the case before me from where Justice Muchemi had reached.

After the prosecution closed its case, both counsels opted not to submit and left the matter with the court to give a ruling.

At this stage of the trial my duty is to determine whether the prosecution has made out a strong case against the accused person to necessitate him to be placed on his defence. A prima facie case is made out when the prosecution offers sufficient evidence against the accused as to make it necessary to call him to defend himself. It is not necessary at this stage to determine whether the evidence proves beyond reasonable doubt that the accused committed the offence with which he is charged. That is the duty of the court at the stage of writing the final judgement where the court must determine if the evidence before it proves the case to the required legal standard. The evidence at this stage of the trial must however be credible and sufficient enough for the court to find that the accused person has a case to answer.

I have considered all the evidence tendered before me as well as that tendered before Justice Muchemi. Without going into the details of the evidence before me at this stage, it is my finding that the evidence so far tendered is credible and sufficient enough to lead me to make a conclusion that a prima facie has been made out against the accused person as to require him to defend himself. I will therefore order, which I hereby do, that the accused has a case to answer. He is hereby informed of his right under section 306 (2) of the Criminal Procedure Code to address this court in the manner in which he intends to defend himself whether by giving a sworn defence or unsworn. He is further informed of his right to call witnesses in his defence and to inform this court whether he wishes to call any witnesses. Orders are mad accordingly.

Dated, signed and delivered this 20th day of May 2015.

S.N.MUTUKU

JUDGE