



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 73 OF 2013**

REPUBLIC..... PROSECUTOR

VERSUS

PETER MAYEKA MOYONGU..... ACCUSED

**RULING**

Peter Mayeka Moyongu, the accused, is charged with murder contrary to section 203 read with section 204 of the Penal Code. It is alleged in the particulars of the offence that on 27<sup>th</sup> June 2013 at Kware slums Ongata Rongai Township within Kajiado County he murdered Job Maina Samwel.

After calling evidence from six witnesses, the prosecution case came to a conclusion. Following various applications to have the case adjourned because the investigating officer could not come to testify for one reason or another the court declined to grant further adjournment. The prosecution counsel told the court that she was not able to close the case for the prosecution and left the matter with the court to make a decision. This court ordered the closure of the prosecution case.

In her submissions the prosecution counsel told the court that a prima facie case has been made out against the accused to require him to give evidence in his defence. The defence on the other hand told the court that the prosecution had failed to establish a prima facie case and that there is no evidence to show that the accused planned to commit murder. Counsel faulted the prosecution for failing to avail crucial witnesses. He relied on **Jamleck Mwaniki Njururi v. Republic [2013] eKLR** and **James Omondi Were v. Republic [2014] eKLR** to emphasize the point that where crucial witnesses for the prosecution are not called to testify, the court is entitled to draw an inference that the evidence of those witnesses would have been adverse to the prosecution case.

I have considered the rival submissions and the evidence so far adduced. The court is not required at this stage to analyze all the evidence in finality as though it was determining the case at the judgement stage. Suffice it to consider the evidence and determine if the evidence so far tendered establishes a prima facie case against the accused. After taking into account all the evidence and the circumstances of this case, it is my finding that the evidence is sufficient to establish a prima facie case against the accused. I will and do hereby place the accused on his defence. I hereby inform him of his rights under section 306 (2) of the Criminal Procedure Code to address this court and inform him how he wishes to give his evidence and whether he wishes to call any witnesses. It is so ordered.

**Dated, signed and delivered this 21<sup>st</sup> July 2015.**

**S.N. MUTUKU**

**JUDGE**