

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 87 OF 2009

REPUBLIC.....PROSECUTOR

VERSUS

JOHN KIOKO MUSEMBI.....ACCUSED

RULING

John Kioko Musembi faces two murder charges contrary to section 203 as read with section 204 of the Penal Code. The particulars of the two charges are that between 13th and 18th day of September 2009 at an unknown time at Keekonyoike Location within Kajiado District of the Rift Valley Province he murdered Muya Kioko and Irene Kioko.

I took over the proceedings in this case after seven (7) witnesses had testified before Hon. Justice Ombija who had disqualified himself from the conduct of this case. The accused chose to proceed from where the proceedings had reached without recalling any witness. I took evidence of seven (7) witnesses. At the close of the prosecution case the prosecution counsel and the defence counsel opted not to submit and asked the court to give its ruling.

Briefly, the facts of this case show that M. K, a boy aged 3½ years and his sister I. N, aged one (1) year were picked by their father, the accused, from their grandmother's home at Isinya, Kajiado, in the afternoon of on 13th September 2009 allegedly to go to the shops at Isinya to buy airtime. They took time to return. At around 7.00pm the matter was reported to the police at Isinya Police Station.

The two children were not seen alive again. The clothes the children had been wearing, a skeleton of human leg and human skull were recovered at Mbirika area in Isinya on 18th September 2009. The accused was thereafter arrested and charged with this offence.

At this stage of the trial after the prosecution has closed its case, the court is required to make a determination as to whether the prosecution has made out a prima facie case to require the accused to be placed on his defence.

I have examined all the evidence from the seven witnesses who testified before Hon. Justice Ombija and the seven witnesses who testified before me and I arrive at a conclusion that the prosecution has established a prima facie case against the accused person. He shall be put to his defence for I find that he has a case to answer. His rights to inform the court the manner in which he intends to defend himself and whether he wishes to call any witnesses as stated under section 306 (2) Criminal Procedure Code have been explained to him. Orders shall issue accordingly.

Dated, signed and delivered this 7th December 2015.

S. N. MUTUKU

JUDGE

In the presence of:

Ms Macharia, for the prosecution

Mr. Wachira for the accused

Mr. John Kioko Musembi, the accused

Mr. Daniel Ngumbi, court clerk