

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Criminal Case 58 of 2006

REPUBLICPROSECUTOR

VERSUS

BENARD GITONGA.....ACCUSED

: CRIMINAL LAW and procedure

: In a trial in the High Court, an accused will be put on his defence if the prosecution established a *prima facie* case – S. 306 (2) of the Criminal Procedure Code (Cap 75 Laws of Kenya)

RULING

Section 306 (1) of the Criminal Procedure Code provides that if at the close of the evidence of the prosecution witnesses, the court considers that there is no evidence that the accused or any several accused committed the offence, it shall after herein of, if necessary, the arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.

On the other Section 306 (2) provides that if after the conclusion of the evidence of the witnesses for the prosecution the Court considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, it shall inform each accused person of the right to address the court, either personally or by his advocate (if any).... to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it intended to call any witnesses as to fact other than the accused person himself, and upon being informed so, the judge shall record the fact.

I have perused the evidence of the witnesses for the prosecution, and in particular the evidence of PW1–5, and I am satisfied that the evidence establishes a prima facie case that the accused persons herein committed the offence of murder, for which they have been charged. I accordingly, and I accordingly call upon each of the accused to give evidence on his own defence.

In compliance the requirements of Section 306 (2) of the Criminal Procedure Code. I remind each of the accused of their fundamental right either to give evidence each on his behalf, or to make an unsworn statement, and to call witnesses if any. I also remind each of the accused that if they opt to give. Sworn testimony they shall be liable to be cross-examined by Counsel for the prosecution, and not be so liable to cross examination if each of them opts to give an unsworn statement. I therefore invite the accused to call the Court. Whether they or each of them will give sworn testimony, and call witnesses to give evidence of fact or each o them will give an unsworn statement.

Dated, delivered and signed at Meru this 12th day of June 2009.

M. J. ANYARA EMUKULE

(JUDGE)

