



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kinyala & another (Criminal Case 196 of 2017)
[2024] KEHC 1208 (KLR) (14 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1208 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE 196 OF 2017
TM MATHEKA, J
FEBRUARY 14, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

MIKE MWANGANGI KINYALA 1ST ACCUSED

MICHAEL NZEKI WAMBUA 2ND ACCUSED

RULING

1. Section 306 of the *Criminal Procedure Code* provides for what should transpire upon the closure of the case for the prosecution in a murder trial. The court will either: find that there is no evidence attaching the accused person to the offence, and record a finding of not guilty; or form the opinion that the accused person may have committed the offence and place the accused on his defence.
2. In this case the accused persons were charged with murder c/s 203 as read with s.204 of the *Penal Code*. The particulars of the charge were that on the 2nd July 2016, jointly with another not before court they murdered Charles Njogu Kirunyu.
3. The accused persons pleaded not guilty to the charge and the trial took off before Hon. C Kariuki J on the 10th October 2017. By 2nd July 2018 he heard three witnesses. Upon his transfer, Hon. Ong'udi J took over in 2019 but left without having heard any witness. Hon. Dulu J took over in December 2020 and heard two witnesses. I took over in March 2023 and heard two witnesses before the prosecution closed its case. The record will speak for itself that the adjournments were caused by applications by the prosecution because witnesses were not availed.
4. Upon closure of the case for the prosecution and in compliance with s. 306(1) the parties were given the opportunity to address the court on the issue of whether or not the prosecution has established a prima facie case to warrant the accused persons being put on the defence.



5. From July 2023 none were filed and counsel for the accused persons told the court on the 15th November 2023 that they had opted not to file any submissions.
6. I have read through the record and considered all the evidence on record and what I recorded myself. Guided by *Anthony Njue Njeru v Republic* [2006] eKLR that at this stage it is not advisable to give reasons for the finding, I am of the view that a prima facie case has been made out against the each of the accused persons to warrant each to be put on his defence as provided for by s. 306(2) of the Criminal Procedure Code.

DATED, SIGNED AND DELIVERED THIS 14TH DAY OF FEBRUARY 2024

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MUMBUA T MATHEKA

JUDGE

CA: Nelima/Elizabeth

Accused: 1: Absent

Accused: 2: Present

Ms. Nzilani holding brief for Mr. Makundi for both accused

Mr. Tanui for State

HCCRA 196 of 2017

14th February 2024

CA: Nelima/Elizabeth

Accused: 1: Absent

Accused: 2: Present

Tanui for state

Mr. Kiluva for Makundi for accused

A2; I rang the first accused he says he is on the way coming.

Court: File place aside:

Later at noon:

Coram as before

Ms. Nzilani holding brief for Mr. Makundi for both accused

Tanui for state

Court. It is now 12 noon and the 1st accused is absent. We have been waiting for him since 9:00am.

Ms. Nzilani I request for 10 minutes.

Court; application for 10 minutes is allowed.

Later at 12:20 PM Accused 2 now present: The m/v had a breakdown.

Court: Ruling delivered;

Section. 306(2) CPC explained to the accused persons



Ms . Nzilani: We will give sworn evidence. We will not call any witnesses

Court: Defence Hearing on 4th of June 2024

Mumbua T Matheka

Judge

14th Feb 2024

