



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mutitu & 2 others (Criminal Case E024 of 2021)
[2023] KEHC 17814 (KLR) (18 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 17814 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL CASE E024 OF 2021
LM NJUGUNA, J
JANUARY 18, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

SOFIA MUTITU 1ST ACCUSED

SILAS MUCHIRI MAGARA 2ND ACCUSED

OSTIAN GITONGA THATI 3RD ACCUSED

RULING

1. The accused persons herein were charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence being that on June 3, 2021 at Kivwe area, Muminji Location, in Mbeere North Sub–County, within Embu County they murdered Titus Kariuki. Upon arraignment in court, they pleaded not guilty and a plea of not guilty was entered for each of them.
2. The case proceeded for trial and wherein the prosecution called six (6) witnesses in support of its case; after which the prosecution closed its case.
3. Under Section 306 of the *Criminal Procedure Code* Cap 75 Laws of Kenya, this court has a duty, upon close of the prosecution’s case, to make a ruling or a decision on whether an accused person has a case to answer or not. Under section 306(1), when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is no evidence that the accused persons committed the offence should, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.
4. Under section 306(2) on the other hand, when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is evidence that the accused person committed



the offence, the court should proceed to place the accused person on his defence and whereby the accused is supposed to present evidence in his defence.

5. As such, at this stage, this court's role is to consider the evidence on record and make a determination as to whether the same presents a prima facie case that would warrant this court to call upon the accused persons to give their defence. Under section 211 of the *Criminal Procedure Code*, a *prima facie* case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person. [See *Ramanlal Trambaklal Bhatt v R* [1957] EA 332 at 334 and 335]. However, it is trite that, where the court is not acquitting the accused person at the close of prosecutions' case, there is no need for a reasoned ruling for a case to answer. Reasons should only be given where the submissions of a no case to answer by the accused is upheld and the accused is to be acquitted. [See *Festo Wandera Mukando v Republic* [1980] KLR 103].
6. I have considered the evidence tendered by the prosecution in this matter as required of this court and from the entirety of the said evidence, it is my view that the prosecution has made up a *prima facie* case against the accused persons. Each of them has a case to answer and they are placed on their defence.
7. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 18TH DAY OF JANUARY, 2023.

L. NJUGUNA

JUDGE

.....for the Accused

.....for the State

