



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Nthiga (Criminal Case E005 of 2021)  
[2023] KEHC 907 (KLR) (15 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 907 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CRIMINAL CASE E005 OF 2021  
LM NJUGUNA, J  
FEBRUARY 15, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**PETERSON NJIRU NTHIGA ..... ACCUSED**

**RULING**

1. The accused person herein was 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 January 21, 2021, at Mufu village in Embu East Sub-County, within Embu County murdered Diaz Njue Gakithia. Upon arraignment in court, he pleaded not guilty and a plea of not guilty was entered.
2. The case proceeded for trial and wherein the prosecution called six (6) witnesses in support of its case, after which it closed its case.
3. Under section 306(1) 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 person 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 put the accused to her 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



person to give his 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 vs R* [1957] EA 332 at 334 and 335].

6. 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 vs Republic* [1980] KLR 103).
7. I have considered the evidence tendered by the prosecution in this matter as required of this court and from the entirety of the evidence, it is my view that the prosecution has made up a prima facie case against the accused person. He therefore has a case to answer and he is hereby put on his defence.
8. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 15<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**L. NJUGUNA**

**JUDGE**

.....for the Accused

.....for the State

