



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CRIMINAL CASE NO. 25 OF 2014**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**THOMAS MUCHANGI MUGA.....1<sup>ST</sup> ACCUSED**

**MORRIS MUCHANGI NJOKI.....2<sup>ND</sup> ACCUSED**

**PETER MWENDWA JOHN.....3<sup>RD</sup> ACCUSED**

**HUMPHREY MUKUNDI MARIGU.....4<sup>TH</sup> ACCUSED**

**RULING**

1. The four accused persons herein face the charge of murder contrary to section 203 as read with section 204 of the Penal code. The particulars of the offence are that; on the nights of 13<sup>th</sup> June 2014 and 14<sup>th</sup> June 2014 at Runyenjes Township in Embu County, jointly with another not before the court murdered Robert Mutwiri Mugo.

2. Their trial commenced on 6/8/2014 and on 24/09/2014, they all pleaded guilty to the charges and a plea of guilty entered against each of them. The plea was re-taken on 27/06/2016 and wherein the accused persons pleaded not guilty. The matter proceeded for pre-trial directions and was certified ready for hearing. The prosecution called a total of six (6) witnesses and who included Dr. Joseph Thuo, a psychiatrist at Embu Level 5 Hospital who produced Mental Status Assessment reports all dated 16/07/2014 to the effect that the accused persons herein were mentally fit to stand trial. The prosecution proceeded to close its case and the defense opted not to file any submissions.

3. Section 306 of the Criminal Procedure Code Cap 75 Laws of Kenya obligates this court, upon close of the prosecution's case, to make a ruling 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 sufficient evidence that the accused or any one of several accused 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. 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 or any one or more of several accused persons committed the offence, the court should proceed to put the accused to his/their defence and whereby the accused is supposed to present evidence in defense.

4. As such and from the above, this court is obligated to consider the prosecution's evidence 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 defences. **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). As such, at this time this court is required to **satisfy itself that a prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the Criminal Procedure Code.**

5. Further, it is trite law, 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. In Festo Wandera Mukando –vs Republic [1980] KLR 103, the court (Trevelyan and Chesoni, JJ) held that: -

**“...we once more draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgement. Where a submission of “no case” is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the count or counts**

**concerned.....”** (emphasis mine)

**6. I have considered the evidence tendered by the prosecution in this matter and from the entirety of the said evidence, it is my considered view** that the prosecution have made up a *prima facie* case against the accused persons. The four accused persons have a case to answer and should be called to make their defences.

7. It is so ordered.

**Delivered, dated and signed at Embu this 10<sup>th</sup> day of February, 2021.**

**L. NJUGUNA**

**JUDGE**

.....*for the State*

.....for the Respondent