

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 8 OF 2017

REPUBLIC.....PROSECUTION

VERSUS

GILBERT KINYUA NYAGA.....ACCUSED

RULING

1. The accused herein is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal code. The particulars of the said offence are that on 18.05.2017 at Kiamunyu village Mavuria location of Mbeere South sub-county within Embu County murdered Munene Njue.

2. Upon arraignment, he pleaded not guilty to the charge. The case proceeded for trial and wherein the prosecution called a total of six (6) witnesses who testified in support of its case. From the evidence on record, the brief facts which comes out are that the deceased was attacked while at home on 18.05.2017 using a stick and died later as a result of the said injuries. The prosecution proceeded to close its case.

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 or a decision on whether an accused person has a case to answer or not. Where the court is of the opinion that there is no 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 {section 306(1)}. Where 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 defence. {section 306(2)}.

4. In order to determine whether the accused person has a case to answer or not, the 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 to give their defence. **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] E.A 332 at 334 and 335).** As such, at this time this court is required to **satisfy itself that a prima facie case 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. The trite law is that this court is only supposed to give reasons for its decision when it is acquitting the accused person at the close of prosecutions' case. Otherwise the court should say no more than that. (See Festo Wandera Mukando –vs Republic [1980] KLR 103).**

5. **I have considered the evidence tendered by the prosecution in this matter and the written submissions on behalf of the accused person. From the entirety of the said evidence, it is my view that the prosecution have made up a prima facie case against the accused and he should be called upon to defend himself.**

6. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 10TH DAY OF MARCH, 2021.

L. NJUGUNA

JUDGE

.....for the Accused

.....for the Respondent