

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 8 OF 2018

REPUBLIC.....PROSECUTION

VERSUS

PAUL MATHEKA MULWA.....1ST ACCUSED

ANTHONY MBINDA KISILU.....2ND ACCUSED

RULING

1. The two accused persons face the charges of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that; on 2.12.2016 at Kiangeni market in Makima location of Mbeere South Sub-county within Embu County jointly with others not before court murdered Daniel Nzila Lumu.

2. They were arraigned in court on 22.02.2018 and wherein they pleaded not guilty to the said charge and the case proceeded for trial. The prosecution called a total of six (6) witnesses and who testified in support of its case. The evidence tendered by the prosecution was to the effect that at around 11.30 pm on 2.12.2016, the accused persons herein took away the deceased from his house, had his hands tied and they went away with him. He was later lynched by members of general public and his body set on fire.

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. Under Section 306(1), where the court is of the opinion that there is no evidence that the accused or any one of several accused committed the offence, the court 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. On the other hand, Section 306(2) provides that 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, it court should proceed to put the accused to his/their defence and whereby the accused is supposed to present evidence in defence.

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 -vs- 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 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. **It is trite 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**).

6. **I have considered the evidence tendered by the prosecution in this matter and the written submissions on behalf of the accused person on no case to answer. From the entirety of the said evidence, it is my considered view** that the prosecution have made up a *prima facie* case against the two accused persons herein to warrant them to be put on their defences. They should proceed and offer evidence, if any, in defence.

7. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 11TH DAY OF MAY, 2021.

L. NJUGUNA

JUDGE

.....for the Accuseds

.....for the Republic