

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCRC NO. 162 OF 2017

FORMERLY MACHAKOS HCCRCR 16 OF 2016

REPUBLIC..... PROSECUTION

-VERSUS-

MUTUNGA MUSEMBI..... 1ST ACCUSED

MUTUKU MUTUA..... 2ND ACCUSED

RULING ON CASE TO ANSWER

1. After the close of the prosecution case wherein the prosecution called eleven (11) witnesses, defence counsel filed written submissions arguing that the court should not put the two accused persons on their defence, as no prima facie case had been established by the prosecution against them for the offence of murder.

2. The prosecuting counsel on her part relied on the evidence on record, and urged the court to put the two accused persons on their defence.

3. I note that the defence counsel has relied on several legal authorities including section 203 and 206 of the Penal Code (cap 63) which relate to the definition of murder and its elements as well as court cases.

4. At this case to answer stage, this court is merely required to base its decision on whether a prima facie case has been established not whether the prosecution has proved its case

against the accused persons beyond any reasonable doubt – see **R.T. Bhatt –vs- Republic (1957) E.A 332.**

5. Having considered the evidence of the prosecution on record, I am of the view that the prosecution has established a prima facie case against both the accused. I thus so find and put each of the two accused persons on their defences and will proceed to explain to them the options available to them in their defences under section 211 of the Criminal Procedure Code (cap.75).

DATED SIGNED & DELIVERED, THIS 17TH DAY OF JUNE 2021, IN OPEN COURT AT MAKUENI.

.....

GEORGE DULU

JUDGE