



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**CRIMINAL CASE NO. 6 OF 2017**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**GENESIO MUGAMBI KATHURI.....1<sup>ST</sup> ACCUSED**

**SAMUEL MUSYIMI MUTEKI.....2<sup>ND</sup> ACCUSED**

**RULING**

1. The accused persons herein were charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code and the particulars of the offence being that on 8.03.2017 at Kauthenge village, Mbeere North Sub-county in Embu County jointly assaulted and caused the death of Marclus Fundi Njiru who died on the 10.03.2017 at Karira Hospital while undergoing treatment.
2. When the accused persons herein were arraigned in court on (10.04.2017), they both pleaded not guilty and a plea of not guilty entered in that respect.
3. The matter then proceeded for hearing and wherein the prosecution called a total of nine (9) witnesses in support of its case and who were thoroughly cross-examined by the defence counsel. The prosecution then proceeded to close its case.
4. Basically, the prosecution's case is that the deceased was attacked on his way home on 8.03.2017 at around 8.00 PM and he died as a result of the injuries sustained therefrom.
5. 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, after the close of the prosecution's case, 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.
6. 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, the court should proceed to put the accused to his/their defence and whereby the accused is supposed to present evidence in defence.
7. In order to determine as to 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).**
8. What this court is required to satisfy itself as at this moment and time is 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.**
9. However, in determining whether the prosecution made a prima facie case against an accused person or accused persons, 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**).
10. I have considered the evidence tendered by the prosecution in this matter and the written submissions on behalf of the accused persons on no case to answer. From the entirety of the said evidence, it is my view that the prosecution has made up a prima facie case against the two accused persons herein. Based on the evidence tendered before this court, the two accused persons have a case to answer and should make their defence.

11. It is so ordered.

**Delivered, dated and signed at Embu this 9<sup>th</sup> Day of June, 2021.**

**L. NJUGUNA**

**JUDGE**

.....for the Accused

.....for the Respondent