

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 23 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH NJIRU MUCHIRI.....1ST ACCUSED

JOHN NYAGA KITHAKA.....2ND ACCUSED

JOSEPH NAMU KARIUKI.....3RD ACCUSED

RULING

1. The three 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 30.05.2012 at Gichera village Kagaari South Location of Embu County jointly with another not before the court murdered Francis Njeru Muchiri. When they were arraigned in court, they all pleaded not guilty and a plea of not guilty was entered.
2. However, the 3rd accused entered into a plea bargaining and vide the orders of 13.12.2018, he was convicted on his own plea of guilty for the offence of manslaughter and sentenced to serve (10) years' imprisonment.
3. The case against the 1st and 2nd accused persons proceeded for trial and wherein the prosecution called seven (7) witnesses in support of its case.
4. Under section 306 of the Criminal Procedure Code Cap 75 Laws of Kenya, this court has a duty, 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), when the evidence of the witnesses for the prosecution has been concluded and 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.
5. 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.
6. As such, at this stage, this court's role is to consider the evidence on record 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 defences. Under section 211 of the Criminal Procedure Code, 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**). However, it is trite that, 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. Reasons should only be given where the submissions of a no case to answer by the accused are upheld and the accused is to be acquitted. (See **Festo Wandera Mukando –vs Republic [1980] KLR 103**).
7. I have considered the evidence tendered by the prosecution in this matter as required of this court and from the entirety of the said evidence, it is my view that the prosecution has made up a *prima facie* case against the accused persons. The four accused persons have a case to answer and are hereby put on their defence.
8. It is so ordered.

Delivered, dated and signed at Embu this 21st day of July, 2021.

L. NJUGUNA

JUDGE

.....for the Accused

.....for the State