



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. 1 OF 2017

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

1. LOHORERE KELVIN

2. MUKOOLI JACKSON..... ACCUSED

RULING

1. The two accused persons, **LOHOREKE KELVIN** and **MUKOOLI JACKSON** were charged in this case with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. The both pleaded not guilty.

2. The prosecution called 13 witnesses and closed the case. That set in motion this Court's consideration of whether the two accused have a case to answer as provided under **Section 306** of the **Criminal Procedure Code Cap. 75**.

3. In the case **REPUBLIC VS. JOSEPH SHITANDI & ANOTHER (2014) eKLR**, it termed a case to answer as:-

“A case to answer is a case where if the accused keeps quiet, the evidence of the prosecution should be such that a conviction will result.”

4. While deciding whether there is a case to answer, the court is not required to make definite finding, especially where the court finds there is a case to answer. This indeed was so stated in the case **REPUBLIC VS. JOES MUTUA ANTHONY & 3 OTHERS (2019) eKLR** as follows:-

“That there is a danger in making definitive findings at this stage, especially where the Court finds that there is a case to answer is not farfetched and the reasons for not doing so are obvious. As was appreciated by Trevelyan and Chesoni, JJ in FESTO WANDERA MUKANDO VS. THE REPUBLIC [1980] KLR 103:

“...we once more draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgment. Where a submission of “no case” is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the count or counts concerned.”

5. At the close of the prosecution's case, if the court is satisfied the prosecution's evidence cannot lead to a conviction, the court should acquit the accused. If however the prosecution's evidence suffices the accused should be called to defend himself.

6. In this case, I am satisfied that the evidence of the prosecution suffices to call upon both accused to defend themselves. Having reached that decision, as per **Section 306(2) of Cap 75** both accused are hereby informed that they have a right to address the court, either personally or by their advocate and to give evidence on their own behalf or to make unsworn statement and call witnesses in their defence.

7. The accused are now called upon to make their election on how they shall present their defence.

RULING DATED AND DELIVERED AT KIAMBU THIS 6TH DAY OF JULY, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Ndege

1ST Accused: present

2nd Accused: Present

For 1st Accused: Mr. Wakaba

For 2nd Accused: Mr. Wakaba holding brief for Kiung

For DPP: Ms. Kathambi

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE