



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 63 OF 2015**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**BENJAMIN KITHINJI.....1<sup>ST</sup> ACCUSED**

**BENARD MUTURA.....2<sup>ND</sup> ACCUSED**

**COSMAS KIRIMI.....3<sup>RD</sup> ACCUSED**

**RULING ON CASE TO ANSWER**

1. Benjamin Kithinji, Bernard Mutura and Cosmas Kirimi are jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The prosecution's case is that on 21<sup>st</sup> August 2015, at Kiegoi Location in Igembe South Sub-County within Meru County, the accused persons jointly murdered Joses Kaiyongi Kachumbika.
2. All the accused persons pleaded not guilty to the charge and the matter proceeded to trial, the prosecution calling a total of 8 witnesses to prove the charge.
3. The court has considered as required under section 306 of the Criminal Procedure Code whether there is the evidence that the accused persons or any of the accused persons committed the offence. At this stage, however, the court is required to be satisfied only that a *prima facie* case exists. As held in *Ramanlal T. Bhatt v. R (1957) EA 332, 335* a *prima facie* case is "**one on which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.**"
4. The Court has considered the evidence presented herein by the Prosecution, but notes that at this stage, it is not required to give elaborate reasons for its decision. The importance of a Court refraining from giving reasons for its decision at the stage of case to answer was discussed in the High Court case of *Kibera Karimi v. R (1979) KLR 36* where Trevelyan & Todd JJ held as follows: -

***"When the Prosecution case was closed, the defence submitted that there was no case for the appellant to answer, which submission was rejected in a detailed ruling, a practice which should not, at all events, generally, be followed as Roskill LJ pointed out in R Vs Falconer-Atlee (1974) 58 Cr App Rep 348, 356 in relation to a jury case:***

***If he was going to leave the case to the jury, he should have left it saying no more than that there was evidence to go to the jury...***

***Roskill L J thought that in the circumstances of the case the trial judge had been unwise, as he put it, because in giving his reasons, he expressed a view, albeit only a tentative view on the facts."***

5. Consequently, the accused shall be put on their defence in accordance with section 306 (2) of the Criminal Procedure Code, and their rights thereunder shall be explained to them.

*Order accordingly.*

**DATED AND DELIVERED ON THIS 17<sup>TH</sup> DAY OF SEPTEMBER, 2021.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances**

**Ms B. Nandwa Prosecution Counsel for the State**

**Mr. E. Kimathi Advocate for the 1<sup>st</sup> and 2<sup>nd</sup> accused persons**

**Ms Ntarangwi for the 3<sup>rd</sup> accused person.**