



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 1 OF 2017**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**GEORGE KAMAU GITAU alias GUNDU.....ACCUSED**

**RULING**

1. The accused person herein was arraigned in court on the 16<sup>th</sup> January, 2017 for plea taking. He faces a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 16<sup>th</sup> day of December, 2016 at Rwika market of Mbeere sub-county he murdered Lucy Ndegi Njuki. He pleaded not guilty and a plea of not guilty entered accordingly.
2. The matter proceeded to hearing and the prosecution called a total of nine (9) witnesses after which the prosecution closed its case.
3. This court has a legal duty upon the 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.
4. 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 with the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty. (see Section 306(1) of the Criminal Procedure Code).
5. 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 defence (see Section 306(2) of the Criminal Procedure Code).
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 his defence.
7. 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 also Ramanlal Trambaklal Bhatt Vs R [1957] EA 332 at 334 and 335).
8. However, it is trite that, where the court is not acquitting the accused person, at the close of prosecution's 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 Kesto Wandura makando Vs R [1980] KLR 103).
9. 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 person which requires the accused to be placed on his defence.
10. The accused person therefore has a case to answer and is hereby put on his defence.
11. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 13TH DAY OF OCTOBER, 2021.**

**L. NJUGUNA**

**JUDGE**

.....*for the Accused*

.....*for the Respondent*