REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 5 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

JUSTUS IRERI NJERU.....ACCUSED

RULING

1. The accused herein 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 19.12.2017 at unknown time at Kiruari village, Njeruri sub-location Kyeni North location within Embu County jointly with others not before court murdered Harrison Muriuki Kavinda.

2. He was arraigned in court on 21.02.2018 and upon the charges being read to him, he pleaded not guilty and a plea of not guilty entered accordingly.

3. The matter proceeded to hearing and the prosecution called a total of seven (7) witnesses in order to discharge its burden of proof after which the prosecution closed its case. Mr. Momanyi for the accused person proceeded to file submissions of no case to answer. Ms. Mati for the respondent elected to rely on the evidence on record.

4. By virtue of section 306 of Criminal Procedure Code, this court has a legal 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. Under section 306(2), 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.

5. 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. The Court in **Ronald Nyaga Kiura vs. Republic [2018] eKLR** stated as follows (in relation to a prima facie case);-

> ***"It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie 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. 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. This is well illustrated in the cited Court of Appeal case of RAMANLAL BHAT -VS- REPUBLIC [1957] EA 332. At that stage of the proceedings the trial court does not concern itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence."***

6. 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. The dangers in making definitive findings while determining on a no case to answer 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 judgement. 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."***

7. I have considered the evidence tendered by the prosecution in support of its case. 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 and which requires the accused to be placed on his defence so as to rebut the same. The accused person therefore has a case to answer and ought to be put on his defence.

8. 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