



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 9 OF 2017**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**DAVID KITHINJI NJOKA.....ACCUSED**

**RULING**

1. The accused person was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence being that, on the 12<sup>th</sup> day of May, 2017 at around 6.00 p.m. at Kithunguriri Location, Embu North Sub County within Eastern Region murdered John Kinyua Njagi.
2. The accused person was arraigned in court on 18.07.2017 and he pleaded not guilty to the charge of murder and a plea of not guilty entered.
3. The matter proceeded to trial and the prosecution called a total of Nine (9) witnesses after which the prosecution closed its case.
4. This court has a duty to make a ruling upon the conclusion of the prosecution’s case on whether the accused person herein has a case to answer or not. When the evidence of the prosecution’s witnesses have been concluded and the court has formed an opinion that there has not been presented evidence that the accused committed the offence should after hearing any arguments from either the prosecution or advocate of the accused person enter a finding of not guilty. (See **Section 306(1) of the Criminal Procedure Code**).
5. On the other hand, should the court hold the opinion that there has been adduced sufficient evidence to warrant the accused to be placed on his defence, the court then should proceed to put the accused person on his defence. (See **section 306(2) of the Criminal Procedure Code**). At this point, this court’s role is to consider the evidence on record and make a determination whether a *prima facie* case has been established to warrant the accused person to be placed on his defence.
6. Section 211 of the Criminal Procedure Code stipulates that a *prima facie* case is established where the evidence adduced by the prosecution is sufficient for the court to return a guilty verdict if no other explanation is offered by the accused person. This was the court’s view in the case of **Ramanlal Trambaklal Bhatt –vs- R [1957] E.A 332 at 334 and 335**.
7. It is trite that, the reasons should only be given where the submission of no case to answer by the accused is upheld and the accused is to be acquitted. In the case of **Festo Wandera Mukando v Republic [1980] KLR 103** the court held that there is no need for a reasoned ruling for a case to answer.
8. This court has considered the evidence adduced by the prosecution in this matter and from its entirety; the prosecution has established a *prima facie* case against the accused person herein.
9. I hereby order that he be placed on his defence.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 17TH DAY OF NOVEMBER, 2021.**

**L. NJUGUNA**

**JUDGE**

.....**FOR THE ACCUSED**

.....**FOR THE RESPONDENT**