



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 17 OF 2019**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**LYDIA WAKUTHII MBOGO.....ACCUSED**

**RULING**

1. The accused person herein 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 are that between 21.08.2018 and 22.08.2018 at South Ngiriyama, within Kirinyaga County, jointly with others not before court unlawfully murdered Francis Mbogo Ndambiri “alias” Kasarani.

2. The accused was arraigned in court on 30.05.2019 and the charge formally read to her on 10.06.2019 and wherein she pleaded not guilty and a plea of not guilty entered against her.

3. The accused was subsequently admitted on bond and the matter proceeded to full trial. The prosecution called a total of eight (8) witnesses in order to discharge its burden of proof after which the prosecution closed its case.

4. 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. 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 (See section 306(1) of the Criminal Procedure Code). 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). 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.

5. 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] E.A 332 at 334 and 335**).

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. (See **Festo Wandera Mukando –vs Republic [1980] KLR 103**).

7. I have considered the evidence tendered by the prosecution in this matter and from the entirety of the said evidence it is my finding that the prosecution have made up a prima facie case against the accused person. The prosecution placed adequate evidence before the court, to enable me put the accused on her defence. I therefore order that the accused be placed on her defence.

8. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 10<sup>TH</sup> DAY OF NOVEMBER, 2021.**

**L. NJUGUNA**

**JUDGE**

.....for the Accused

.....for the Respondent