

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 4 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

NICHOLAS MUTHOMI MANYARA.....1ST ACCUSED

DENNIS MUTHURI MUGUNA.....2ND ACCUSED

RULING

1. This ruling is on whether the accused persons have a case to answer. The two accused persons face a charge of murder contrary to **Section 203 as read with 204 of the Penal Code** to which they both pleaded not guilty.

2. The prosecution called nine (9) witnesses and at the close of his case, the defence counsel Mr. Kimani Njuguna put in his submissions on no case to answer raising several issues.

3. Citing the cases of **Joshua Ndirangu & Another vs Republic High Court of Nyeri, Criminal Case No. 35 of 2011 and Bhatt vs Republic (1957) EA at page 335** counsel argued that the prosecution case was filled with inconsistencies and contradictions. Secondly, he argued that the names of the accused persons as stated by the prosecution witnesses was not reflected in the information. Thirdly, that the evidence of PW2, a minor ought to have been corroborated pursuant to Section 124 of the Evidence Act. Further that the evidence of PW1 and PW9 is at variance as to whether they both entered the house at the scene of the crime. Additionally, though PW9 stated that they collected a panga and seat covers soaked with blood, the statements of both PW9 and PW1 do not indicate the same. Counsel further argued that it was strange as to why the panga and the seat covers were never produced as exhibits in court. As such, he concluded that investigations were poorly done as the panga and seat covers were vital evidence, which was never produced in court. Lastly, counsel argued that the prosecution failed on its part by failing to call the investigating officer Inspector Bruce who was a crucial witness to the case. Furthermore, the prosecution did not call any independent witnesses as all the witnesses who testified except the doctor and PW9 were all related.

4. On the other hand, there are two prosecution witnesses who placed the accused persons at the scene of the crime with one of them claiming to have witnessed the incident, and saw them armed with pangas.

5. Having carefully perused the evidence of the prosecution witnesses. I am of the opinion that the prosecution has established a prima facie case. The Court of Appeal held in the case of **Antony Njeru vs Republic [2006] eKLR** that:-

“Taking into account the evidence on record, what the learned Judge said in his ruling on no case to answer, the meaning of a prima facie case as stated in Bhatt’s (supra), we are of the view that the appellant should not have been called upon to defend himself as all the evidence was on record. It seems as if the appellant was required to fill in the gaps in the prosecution case. We wish to point out here that it is undesirable to give a reasoned ruling at the close of the prosecution case, as the learned Judge did here unless the court concerned is acquitting the accused person.”

6. Relying on that case, it is not necessary at this point to do the analysis of the evidence. The holding the Court of Appeal in my view was intended to prevent a scenario where the court would pre-empt the case of the defence. As such, I find that the prosecution has established a prima facie case against the accused persons. The accused persons have a case to answer and are hereby called upon to give their defence.

7. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 9TH DAY OF NOVEMBER 2021.

F. MUCHEMI

JUDGE

Ruling delivered through video link this 9th day of November 2021