

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 23 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

STEPHEN MBOGO NDWIGA.....1ST ACCUSED

MARY GATAVI MBOGO.....2ND ACCUSED

RULING

1. The accused persons herein were 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 on 26.09.2016, at around 1130 am at Makengi Location Embu North Sub-county, Embu County within Eastern region jointly murdered Nazario Ndwiga Matenguri.

2. The two accused herein took plea on 17.10.2016 and wherein they both pleaded not guilty and a plea of not guilty entered against each of them. However, before the trial commenced, the 2nd accused passed on and vide the orders of 28.05.2018, the 2nd accused person was discharged from the proceedings under Section 87(a) of the Criminal Procedure Code.

3. The matter proceeded to hearing against the 1st accused and 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**). 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**).

6. 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 1st accused person and which requires the accused to be placed on his defence so as to rebut the same. The 1st accused person therefore has a case to answer and is hereby put on his defence.

7. As for the 2nd accused person, as I have already noted, she passed on and she was discharged from the proceedings. As such, I make no orders against her.

8. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 2ND DAY OF NOVEMBER, 2021.

L. NJUGUNA

JUDGE

.....for the 1st Accused

.....for the Respondent