

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 45 OF 2015

REPUBLIC.....PROSECUTION

VERSUS

KENNETH MUTHOMI MBAYA.....ACCUSED

RULING ON CASE TO ANSWER

1. The accused is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that he “*during the night of 14th of march 2015 at Kianjogu village, Buri Kingori Sub-location in Imenti Central District within Meru County murdered Susan Kathambi Magaju.*” The accused person pleaded not guilty to the charge and the matter proceeded to trial, the prosecution calling 7 witnesses to prove the charge.

2. The court has considered as required under section 306 of the Criminal Procedure Code whether there is the evidence that the accused person committed the offence. At this stage, the court considers the prosecution evidence to establish whether a *prima facie* case exists, which as held in *Ramanlal T. Bhatt v. R* (1957) EA 332, 335 is “*one on which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.*”

3. Where the court has considered that there is **not** established a *prima facie* case, the accused is entitled to an acquittal, see *Murimi v. R* (1967) EA 542 and *Wachira v. R* (1975) EA 262, and the court is required to give full reasons for the decision but not so where the court finds that a *prima facie* case has been established as held in *Kibera Karimi v. R* (1979) KLR 36 (Trevelyan & Todd JJ) so as not to prejudice the fair trial of the case by giving the impression that the court has already made up its mind without hearing the defence. See also *Festo Wandera Mukando v. R* (1976 – 80) KLR 1626 and *Antony Njue Njeru v R*, Nairobi C.A. Cr. Appeal No. 77 of 2006 (2006) eKLR and the *Kenya Judiciary Criminal Procedure Benchbook*, 2018 at pages 99-100.

4. The court considers that there is the evidence that the accused person committed the offence, having regard to the elements of the offence of murder.

ORDERS

5. Consequently, the accused shall be put on his defence in accordance with section 306 (2) of the Criminal Procedure Code, and his rights thereunder shall be explained.

Order accordingly.

DATED AND DELIVERED ON THIS 15TH DAY OF DECEMBER, 2021.

EDWARD M. MURIITHI

JUDGE

Appearances

Ms B. Nandwa Prosecution Counsel for the State.