



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

(CORAM: CHERERE-J)

CRIMINAL CASE NO. 63 OF 2018

BETWEEN

REPUBLIC.....PROSECUTOR

AND

DUNCAN KIUNGA.....ACCUSED 1

NAHASHON KIOGORA MUTUNGA.....ACCUSED 2

FELIX KARANI.....ACCUSED 3

JOHN GITUMA KITHURE.....ACCUSED 4

KIAMBA MWAJA.....ACCUSED 5

RULING

1. DUNCAN KIUNGA, NAHASHON KIOGORA MUTUNGA, FELIX KARANI, JOHN GITUMA KITHURE and KIAMBA MWAJA (Accused 1 to 5 respectively) are charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of the charge are that on the night of 23rd June, 2018 at Mitunguu Airstrip in Gakoromone village, Kirindine location, Imenti South sub-county within Meru County murdered GODFREY MUTUMAROSELYNE MUNALA

2. Accused persons denied committing the offence and the prosecution called a total of nine (9) witnesses in support of their case.

3. Section 306(1) of the *Criminal Procedure Code* provides as hereunder:

When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, 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.

4. At this stage, the court is being called upon to decide whether or not the prosecution has made out a *prima facie* case against the accused persons that would warrant this court to call upon them to give their defence. In **Republic vs. Abdi Ibrahim Owl [2013] eKLR** a *prima facie* case was defined as follows: -

Prima facie” is a Latin word defined by Black’s Law Dictionary, 8th Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “Prima facie case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with. In Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335, the court stated as follows:

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction.” This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence”. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence...It is may not be easy to define what is meant by a “prima facie case”, but at least it must mean 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.”

5. I have considered the evidence tendered by the eleven (11) prosecution witnesses and I am persuaded that a *prima facie* case has been established that warrants this court to call upon the Accused 1 to defend himself.

6. Under Section 306(1) of the Criminal Procedure Code and for reasons to be given later in the judgment, Accused 2, 3, 4 and 5 are found **NOT GUILTY** and are hereby set at liberty unless otherwise lawfully held.

DATED THIS 09TH DAY OF DECEMBER, 2021

WAMAE. T. W. CHERERE

JUDGE

Court Assistant	- Kinoti
Accused	- Present
For the Accused persons	- Mr. Thangichia Advocate
For the State	- Ms. Mwaniki