



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO. 22 OF 2017

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

JACOB ASWANI MUDANYA.....ACCUSED

RULING

1. **JACOB ASWANI MUDANYA** is charged with the offence of murder. The prosecution closed its case after calling 7 witnesses. The closure of the prosecution's case calls upon this Court to rule whether the accused has a case to answer as provided under section 306 of the Criminal Procedure Code Cap. 75. In the case **REPUBLIC VS. JOSEPH SHITANDI & ANOTHER (2014) eKLR** the judge held:-

“A case to answer is a case where if the accused keeps quiet, the evidence of the prosecution should be such that a conviction will result.”

2. In the case **REPUBLIC VS. JONES MUTUA ANTHONY & 3 OTHERS (2019) eKLR** the court considering whether the accused had a case to answer stated:-

*“8. The question that this court has to deal with and answer at this stage is therefore whether based on the evidence before this Court, the Court after properly directing its mind to the law and the evidence can convict if the accused chose to give no evidence. It was therefore held in **RONALD NYAGA KIURA VS. REPUBLIC [2018] eKLR** wherein paragraph 22 it is stated as follows:*

*“It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of 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. This is well illustrated in the cited Court of Appeal case of **RAMANLAL BHAT -VS- REPUBLIC [1957] EA 332**. At that stage of the proceedings the trial court does not concern itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence.”*

3. In this case, I am satisfied that the evidence of the prosecution does suffice for the accused to be called upon to defend himself.

4. Accordingly, as provided under **Section 306(2) of Cap. 75**, the accused is informed that he has a right to address the court, either personally or by his advocate or to give evidence on his own behalf, or to make unsworn statement and to call witnesses in his defence. The accused is also required to state whether he shall call any witnesses. The accused is now called upon to make his election on how he shall present his defence.

RULING DATED AND DELIVERED AT KIAMBU THIS 9TH DAY OF DECEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Maurice

For DPP : Kathambi/Kasyoka

For Accused :- Njehu

Accused : **JACOB ASWANI MUDANYA** : Present

COURT

RULING delivered virtually.

MARY KASANGO

JUDGE