



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 02 OF 2017

REPUBLIC.....PROSECUTION

AND

DANIEL OYONDI MOI.....ACCUSED

RULING

The accused person **Daniel Oyondi Moi** is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

In the information dated 5th May 2017, it was alleged that on 29th April 2017 at Kiawara village within Mweiga Township Kieni West, sub County Nyeri County he murdered Regina Kiinyu.

The state called 9 witnesses and then closed its case.

At this point in the criminal trial the court is required to determine whether a prima facie case has been established to warrant the accused person being put on his defence.

For a murder charge a prima facie case will be established where there is evidence to support the ingredients of the charge.

Bhatt Vs. Republic (1957) EA 322 set the standards for a prima facie case that there is evidence before a reasonable tribunal sufficient enough if the accused person said nothing in his defence the court could convict.

The prosecution must establish that a person died, in this case the fact of death of Regina Kiinya was established by the postmortem report, witnesses alleged that they saw the accused person in this case who commit the offence.

I heard submissions by both the defence and the state. Counsel for accused Mr. Gathiga Mwangi argued that the state had not established *mens rea* on the part of the accused, and in any event the accused person had been provoked by the deceased.

The state through Mr. Magoma argued that the state had established that it was the accused who had committed the offence.

I have carefully considered the evidence as presented, the submissions by both sides. I am of the view that the prosecution has established a *prima facie case* against the accused to warrant him being put on the defence as required by section 306(1) of the CPC.

Dated, delivered and signed at Nyeri this 8th Day of February 2019.

Mumbua T. Matheka

Judge

In the presence of:

Court Assistant-Juliet

Mr.Kiu for state

Gathiga Mwangi for accused

Mumbua T. Matheka

Judge

8/2/19