



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

CRIMINAL CASE (MURDER) NO. 11 OF 2018

REPUBLIC.....PROSECUTOR

-VERSUS-

WESLEY PATRICK EYANAE.....RESPONDENT

RULING

(Under Section 306(1) of the Criminal Procedure Code, Cap 75 Laws of Kenya)

The accused is charged with the offence of Murder of one Gilbert Kipyegon Koech on the 2nd February 2018 at Umoja Location in Rongai Sub-County within Nakuru County. He pleaded not guilty.

The prosecution called 9(nine) witnesses to prove that it is the accused who murdered the deceased.

I have examined their evidence.

PW1 testified to have found the accused's T-shirt with blood stains in the morning after the murder. She was the wife of the accused. He could not explain to her the origin of the blood nor presence of a radio, the deceased's property in his house.

PW4 testified to have sold a telephone hand set to the deceased on the 1st February 2018 a day before his death. This phone set was found in the possession of the accused on the day the deceased was found dead. He testified to have seen the police remove the said phone from the accused's pocket on the day of his arrest.

Section 306(1) and (2) of the Criminal Procedure Code provides that if the court is satisfied that the evidence adduced by the prosecution witnesses establishes a *prima facie* case against the accused, it makes a finding that there is a case to answer, and calls upon such accused person to defend himself by either unsworn or sworn evidence – **Criminal Case No.18 of 2015 R -vs- Alex Mwanzia Mutangili (2017) e KLR.**

However, if no sufficient evidence is called to establish a *prima facie* case, the court enters a finding of not guilty and acquits the accused.

- See **R.T. Bhatt –vs- R (1957) EA 332 – 334.**

For the court to call upon the accused to answer to the charge of murder, the evidence adduced should be

able to prove the ingredients of the offence, but mere scintilla of evidence or suspicion will not be enough.

In the instance case, the accused ought to answer or explain presence of blood stains in his shirt and possession of the deceased's telephone handset in the morning of the murder, among other allegations.

The upshot is that the court is satisfied that the accused has a case to answer. He shall thus be placed on his defence.

It is so ordered.

Dated, delivered and signed at Nakuru this 18th Day of June 2019.

J.N. MULWA

JUDGE