



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 34 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JEREMY KIOGORA MBAE.....ACCUSED

RULING

1. The Accused herein has been charged with murder contrary to section 203 as read with section 204 of the Penal Code Cap 63 Laws of Kenya.
2. The particulars of the offence are that on 19th May 2014 at Kiringa Location in Imenti South District within Meru County jointly with others not before the Court murdered **Rosemary Gacheri**.
3. At this stage, the task of the court is to determine whether or not the prosecution has established a prima facie case against the accused as to call upon him to enter his defence. See Section 306 of the Criminal Procedure Code which provides that:-

306. (1) 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.

(2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.

(3) If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon him to enter upon his defence.

4. A *Prima facie* case has been said to be;

“...one which a reasonable tribunal properly directing its mind to the law and the evidence would convict if no explanation is offered by the defence”. See RAMANLAL BHATT vs. R (1957) EA 332(CA)

5. During the hearing the prosecution called eleven (11) witnesses. And upon careful consideration of the evidence adduced, I find there is evidence that supports the charge against the accused person, Accordingly, I find that the accused person has a case to answer and is hereby placed to his defence.

6. The accused is duly informed of his right to address the court, either personally or by his advocate, to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence. The accused person or his advocate shall now state whether it is intended to call any witnesses as to fact other than the accused person himself.

Dated, signed and delivered in open court on 10th June 2019

F. GIKONYO

JUDGE

IN PRESENCE OF

M/s Njenga for Kiogora for accused

Accused Present –

Namiti for state

F. GIKONYO

JUDGE