



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 53 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JASONI KAICII LIKURA.....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 of the Laws of Kenya**. The particulars of the offence are that on the 23rd day of July 2013 at Nūba village, sub-location in Tigania West District within Meru County, the accused murdered **Tabitha Nkatha M'Mutia M'Likura**.

[2] The prosecution closed its case on 2nd July, 2018. At this point, the court should 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:-

“(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.”

[3] This exercise is not merely mundane ritual; it is an essential part of criminal trial, for it ensures that no one continues to stand trial unless a *prima facie* case has been established against him at the close of the prosecution's case. It is a requirement that is founded upon the right to fair trial and gives effect to the presumption of innocence of the accused at all stages of trial.

[4] A *Prima facie* case is:-

“...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 eight (8) witnesses. Upon careful consideration of the evidence adduced, I find there is evidence that supports the charge against the accused. Accordingly, I find that the accused has a case to answer and place him to his defence.

[6] The accused has been 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 or his advocate to state to the court whether it is intended to call any witnesses other than the accused person himself.

Dated Signed and delivered in open court this 16th day of July 2019

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F. GIKONYO

JUDGE

In presence of

Namiti for state

Ojiambo holding brief for Nyenyire

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F. GIKONYO

JUDGE