



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA

AT MERU

HCR CASE 18 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

STEPHEN MURURU.....1<sup>ST</sup> ACCUSED

NAFTALI MURIUNGI.....2<sup>ND</sup> ACCUSED

RULING

1. The two accused persons were charged with the offence of murder contrary to section 203 s read with section 204 of the penal code CAP 63 of the Laws of Kenya. The prosecution closed its case on 20<sup>th</sup> June 2019, after having called 7 witnesses. I will now determine whether or not the prosecution has established a prima facie case against the accused persons as to call upon him to enter his defence. This is the question that now falls for determination before this court. 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.**

2. 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)**

3. Upon perusal of the evidence adduced, there is prima facie case established against the accused persons. Accordingly the accused persons are hereby placed on their defence. The accused persons have been duly informed of their right to address the court, either personally or by their advocate, to give evidence on their own behalf, or to make an unsworn statement, and to call witnesses in their defence. The accused persons or their advocate are required to state whether they intended to call any witnesses as to fact other than the accused persons themselves. Section 306 of the CPC complied with. It is so ordered.

HON. A.ONG'INJO

JUDGE

RULING DELIVERED, SIGNED AND DATED THIS 11<sup>TH</sup> DAY OF JULY 2019.

**In the presence of:**

**C/A: Mr Kinoti**

**1<sup>st</sup> Accused – Present in person**

**2<sup>nd</sup> Accused – Present in person**

**Mr Mutuma Advocate for the accused: Mrs Ntarangwi Advocate holding brief**

**HON. A.ONG'INJO**

**JUDGE**

**Court**

Accused persons informed how to defend themselves in Kimeru and they reply:-

A1:- Sworn statement. No witness

A2:- Unsworn statement. No witness.

Order:

Defence Hearing – 31.10.2019

**HON. A.ONG'INJO**

**JUDGE**