



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CRIMINAL MURDER NO. 17 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**STEPHEN WACHIRA WANGARA.....ACCUSED**

**RULING**

1. The accused person Stephen Wachira Wangara is charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged that on 2.8.2014 at Kirimaini village in Kirinyaga West District within Kirinyaga County he murdered Fredrick Kinyua Wachira.

2. The accused person denied the charge. The prosecution called eleven witnesses in the effort to prove the charge against the accused and closed their case.

3. The counsel for the accused Mr. Ndana submitted that the accused has no case to answer and should be set free at this stage.

4. For the state it was submitted that the prosecution has placed sufficient material evidence to demonstrate that the accused should be put on his defence.

5. I have considered the evidence adduced and the submissions which were made at the close of the prosecution case. The test of a prima facie was laid down in the case of **Ramanlal T Bratt – Vs – R (1957) E.A** where the court stated: A prima facie case is one on which a reasonable tribunal properly directing its mind to the law and evidence could convict if no explanation is offered by the defence.

6. Having considered the evidence adduced, I find that the prosecution has established a prima facie case to warrant the accused to be called upon to address the court in his defence.

7. At this stage, I need not give reason as this may prejudice the defence of the accused if he opts to give a defence or it may be concluded that the court has already made findings without even giving the accused an opportunity to be heard. The Court of Appeal in the case of **Anthony Njine Njeru -Vs- R Nairobi Cr. Appeal No. 77/2006** held that if the court concludes that a prima facie case has been made, it should not give reasons for that finding because it may appear as if the court has made up its mind even before hearing the defence. It is therefore sufficient to inform the accused that there is a prima facie case which he is required to answer.

8. The court is then obliged to comply with **Section 306 (2) of the Criminal Procedure Code**.

The accused is informed that he has a right to address the court either personally or by his advocate, to give evidence on his own or make unsworn statement and call witnesses in his defence.

**Dated at Kerugoya this 11<sup>th</sup> day of October 2019.**

**L.W. GITARI**

**JUDGE**

**11.10.19**

Ruling read out in open court, Ms Muthoni Prosecuting Counsel,

Accused Present,

Mr. Ndana Advocate for him

Court Clerk Gichia

Mr. Ndana; The accused will give sworn evidence. He will not call witnesses.

Defence Hearing on 3.2.2020

**L.W. GITARI**

**JUDGE**

**11.10.19**