



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL CASE NO.13 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DAVID MWAKI KALUNGE.....ACCUSED**

**RULING**

**No case to answer**

[1] The prosecution closed its case on 21<sup>st</sup> February, 2018. I should now determine whether the prosecution has established a prima facie case against the accused as to be called upon to enter on his defence. Here, I am guided by 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] 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. This requirement is founded upon the right to fair trial and gives effect to the presumption of innocence of the accused at all stages of trial.

**Prima facie case**

[3] We learnt this subject in our early stages of university education in criminal law. But, the subject remains as important today as it has always been in modern criminal justice. 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)***

[4] The accused is facing a charge of murder charges. Seven witnesses gave evidence for the prosecution. Upon perusal of the said evidence adduced, there is a prima facie case established against the accused. Accordingly, the accused is hereby 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. Now the accused or his advocate shall state to the court whether it is intended to call any witnesses other than the accused person himself. It is so ordered.

Dated, signed and delivered in open court at Meru this 2<sup>nd</sup> day of May 2018

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr. Kiarie advocate for State

M/s. Athieno for accused

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**F. GIKONYO**

**JUDGE**