

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
CRIMINAL CASE NO. 28 OF 2015

REPUBLIC.....PROSECUTION

VERSUS

JOHN KYAI KIKUVI.....1ST ACCUSED

BONIFACE MUSYOKA KYAI.....2ND ACCUSED

R U L I N G

1. The two accused persons face a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. They pleaded not guilty to the offence.
2. At the close of the prosecution's case, the defence filed submissions of no case to answer through Ms. Muriuki counsel representing the accused persons. The summary of the evidence was made and several issues raised including the insufficiency of the evidence to support the charge. It was argued that the prosecution had not made up a prima facie case against the accused persons.
3. The state filed submissions to the effect that a prima facie case had been established relying on the evidence of PW1, PW2 and others. It was submitted that the doctor had formed the opinion that the cause of death was the head injury which was consistent with the assault.
4. I have considered all the issues raised by the defence and thoroughly perused the evidence on record. At this juncture, the court need not give a reasoned ruling to avoid pre-empting the defence of the accused persons.
5. I rely on the case of **ANTHONY NJUE NJERU VS REPUBLIC [2008] eKLR** where the Court of Appeal held:-

We wish to point out that it is undesirable to give a reasoned ruling at the close of the prosecution case, as the learned Judge did here unless the Court concerned is acquitting the accused person.

6. It is my finding that the evidence on record is sufficient to support the charge. The accused persons have a case to answer and are hereby called upon to give their defence.

DATED, DELIVERED AND SIGNED AT EMBU THIS 11TH DAY OF JUNE, 2018.

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Muriuki for accused persons

Ms. Mate for State

Both accused persons present