



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 90 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

DAVID GITONGA.....ACCUSED

RULING

No case to answer

[1] The prosecution closed its case on 31st July, 2018. I should now determine whether the prosecution has established a *prima facie* case against the accused as to be called upon the accused 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.”

[2] This exercise is not merely mundane ritual. It is an essential part of criminal trial and ensures, after close of prosecution case, that the accused does not continue to stand trial unless a *prima facie* has been established against him. The requirement gives effect to the right of the accused to be presumed innocent at all stages of trial.

[3] What therefore is a *prima facie* case? A *Prima facie* case is 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)*

[4] The accused is facing a charge of murder. Seven witnesses have testified. Applying the test and on perusal of the said evidence adduced, there is a *prima facie* case established against the accused. Accordingly, the accused is hereby called upon to enter into his defence against the charges he is facing before this court. The accused is also 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 18th day of September, 2018

F. GIKONYO

JUDGE

In the presence of:

Mr. Kiarie for state

Mrs. Kaume for accused – absent

F. GIKONYO

JUDGE