



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO.64 OF 2010

REPUBLIC.....PROSECUTOR

VERSUS

MOSES GITONGA AITHIMA.....ACCUSED

RULING

Case to answer

[1] The accused person is facing a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code CAP 63 of the Laws of Kenya. The prosecution closed its case on 11th July 2018, having called a total of 6 witnesses. Both counsel for the State and Defence intimated to court that they would not be submitting but would rely on the evidence adduced and requested for date for a ruling on no case to answer. The question that falls for determination before this court therefore, is:-

a. whether the evidence adduced by the prosecution is sufficient to warrant the accused being placed on his defence.

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] The above question seeks to know whether a “*prima facie*” case has been established, to wit, a case;

“...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] The accused is facing a charge of murder. Six witnesses gave evidence for the prosecution. Applying the test of law and upon perusal of the said evidence adduced, there is a *prima facie* case established against the accused. Accordingly, the accused is hereby placed on his defence. The accused person has been duly 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. The accused or his advocate is required to state whether it is intended to call any witnesses as to fact 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

Mr. Otieno C for accused – absent

Accused – present

F. GIKONYO

JUDGE