



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 59 OF 2013**

**REPUBLIC.....PROSECUTOR**

**Versus**

**JOSEPH MWENDA KIUNGU.....ACCUSED**

**RULING**

**Case to answer**

[1] The accused person was charged with the offence 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 27<sup>th</sup> September 2018; after having called 5 witnesses. Counsel for the State intimated to court that he will not submit. Defence counsel, M/S Nelima intimated to court that she will file submissions in 7 days. The court directed her to file the submissions in 7 days. By the time of delivery of this ruling she had not filed the submissions. The case was scheduled for ruling on 9<sup>th</sup> October 2018 to determine whether or not the prosecution has established a prima facie case against the accused as to call upon him to enter his defence. This is the question that now falls for determination before this court. 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] A *Prima facie* case has been 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)***

[3] The accused is facing a charge of murder. Four 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 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 9<sup>th</sup> day of October 2018**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr. Namiti for State

M/s. Nelima for accused – absent

Accused

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**F. GIKONYO**

**JUDGE**