



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT CRIMINAL CASE NO 109 OF 2009
REPUBLIC.....PROSECUTOR
VERSUS
EDWARD MURIUKI NYAGA.....ACCUSED
RULING

1. The accused **EDWARD MURIUKI NYAGA** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which were that between 26th and 27th day of July, 2009 at Mwihoko estate in Nairobi North District within the then Nairobi Province murdered **PATRICK NDUNGU KARIUKI**.
2. He pleaded not guilty and on 9/3/2011 his trial commenced before Justice Ombija (as he then was) who heard the evidence of fourteen (14) prosecution witnesses before retiring from the Judiciary and on 20/6/2016 directions under **Section 201(1) and 200 of Criminal Procedure Code** were given to the effect that the matter proceed for hearing from where it had reached before me.
3. It must be stated for record purposes that I only heard the evidence of **PW15 SP MAXWEL OTIENO** and **PW16 MARTIN WEKESA** but have perused and read the recorded proceedings before Justice Ombija for the purposes of this ruling.
4. At the close of the prosecution case, both the defence and the prosecution opted not to make any submissions on no case to answer and left it upon the court to make a determination based upon the evidence on record.
5. The court is at this stage of the proceedings called upon to determine whether a case has been made out by the prosecution strong enough to justify calling upon the accused person to offer an explanation as was stated in the now celebrated case of **REPUBLIC v JAGJIVAN M. PATEL & Others (1) TLR** as follows:-

“All the court has to decide at the close of the evidence in support of the charge is whether a case is made out against the accused just sufficiently to require him to make a defence, it may be a strong case or a weak case. The court is not required at this stage to apply its mind in deciding finally whether the evidence is worthy of credit or whether if believed it is weighty enough to prove the case conclusively beyond reasonable doubt. A ruling that there is a case to answer would be justified in my opinion in a border line case where the court, though not satisfied as to the conclusiveness of the prosecution evidence, is yet of the opinion that the case made out is one

which on full consideration might possibly be thought sufficient to sustain a conviction.”

6. From the evidence tendered in support of the prosecution case in particular the evidence of PW1, PW3, PW5, PW6, PW9 and PW11 and being alive to the accused constitutional rights under **Article 50(2) (i)** of the Constitution of Kenya 2010, I am satisfied that a prima facie case has been established by the prosecution to enable me, which I hereby do, put the accused on his defence.

7. The accused is therefore informed of his rights under **Section 306(2)** of the Criminal procedure Code and shall therefore, through the legal advice of his counsel, choose how he intends to defend himself.

DATED, DELIVERED and SIGNED at Nairobi this **21st** day of February, 2017

.....

J. WAKIAGA

JUDGE

In the presence of:-

Mrs. Kinoti for the State

Mr. Magero for the accused

Accused present

Tabitha court clerk