



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT CRIMINAL CASE NO 75 OF 2012

REPUBLICPROSECUTOR

VERSUS

DANIEL MUNYI MWANIKIACCUSED

RULING

1. The accused **DANIEL MUNYI MWANIKI** is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which are that on the 4th day of September, 2012 at Thiongo location in Kabete Division within Nairobi County murdered **ANN NJERI KIRAGU**.

2. He pleaded not guilty and to prove its case against him the prosecution called a total of four witnesses of which two testified before Justice Lesiit, one before Justice Lesiit and myself while one PW4 testified before me.

SUBMISSIONS

3. At the close of the prosecution case the parties were called up to address the court on whether a case had been made out by the prosecution to enable the court place the accused on his defence. It was submitted on behalf of the accused that out of the ten listed potential witnesses only four testified and that the only link the accused has with the offence is that he was at the scene of crime and therefore no prima facie case was established to warrant placing the accused on his defence.

4. On behalf of the prosecution it was submitted that both the deceased and the accused were in their house at 8.30 p.m. taking alcoholic drinks and that the accused was the last person with the deceased as per the evidence of all prosecution witnesses.

5. At this stage, the issue is not whether or not the prosecution has established a case against the accused person beyond reasonable doubt but whether a case has been made to justify calling upon the accused person to offer an explanation as was stated in the 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 before the court and taking into account the accused person's Constitutional Rights under **Article 50(2) (i)** of the Constitution to remain silent and not to testify during the proceedings and taking into account the evidence of PW1 and PW4 this is a case where the accused if he so wishes ought to say his side of the story.

7. I am therefore satisfied and find that a prima facie case has been made out against the accused person sufficient enough to require him to answer to the same and hereby place the same on his defence. The accused person is therefore advised of his rights under the provisions of **Section 306(2) and (3)** of the Criminal Procedure Code.

DATED, SIGNED and DELIVERED at Nairobi this **5th** day of **April**, 2017.

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J. WAKIAGA

JUDGE

In the presence of:-

Mrs. Kinoti for the State

Mr. Olewe for the Accused

Accused present

Tabitha court clerk`