



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE NO. 36 OF 2016

REPUBLICPROSECUTOR

versus

JAMES MWANGI GATIMU1st ACCUSED

DENNIS KANIARU WANGUI 2nd ACCUSED

RULING

1. The accused person **JAMES MWANGI GATIMU** and **DENNIS KANIARU WANGUI** are charged with the offence of murder **Contrary to Section 203 as read with Section 204 of the Penal Code**. They pleaded not guilty.

2. The prosecution called five witnesses and concluded submitting its evidence and closed its case. This calls upon this court to consider whether the accused have a case to answer as provided under **Section 306** of the **Criminal Procedure Code Cap 75**. In the case **REPUBLIC – V- JOSEPH SHITANDI & ANOTHER [2014] eKLR** the prosecution having closed its case the Judge in considering whether the accused had a case to answer stated:

“A case to answer is a case where if the accused keeps quiet, the evidence of the prosecution should be such that a conviction will result.”

At the close of the prosecution’s case, therefore, the court if it finds that the prosecution’s evidence could not lead to a conviction, then the accused should be acquitted. If however the court finds that the prosecution’s evidence suffices then the accused will be called to defend themselves.

3. In this case I am satisfied that the evidence of the prosecution does suffice for the accused to be called upon to defend themselves Accordingly as per **Section 306 (2) of Cap 75** the accused are informed that they have a right to address the court, either personally or by his advocate and to give evidence on their own behalf, or to make unsworn statement, and to call witnesses in their defence. The accused are now called upon to make their election on how they shall present their defence.

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

1st Accused: James Mwangi Gatitu

2nd Accused: Dennis Kaniaru Wangui

For accused.....

For state:

Language

COURT

Ruling delivered in open court

MARY KASANGO

JUDGE