REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 70 OF 2019

REPUBLIC……

……..PROSECUTOR

VERSUS

SHADRACK MIRITI AKWALU……

….ACCUSED

RULING

1. The accused is charged with the offence of murder, contrary to section 203 as read section 204 of the Penal Code.

2. The Particulars of the offence were that on 26th day of July, 2019, at Kangeta Location, in Igembe Central Sub-County within Meru County, he murdered AYUB MWONGERA.

3. On 16th October, 2019, the charge was read to the accused and he pleaded not guilty. Thereafter the trial ensued with prosecution calling a total of five (5) witnesses in support of its case.

4. None of the parties filed submissions on no case to answer.

5. At this stage the court's duty is to determine whether the prosecution has made out a prima facie case to require the accused to be put on his defence.

6. What then is a prima facie case? The test of this was settled in the case of **Ramanlal T. Bhatt -Vs- Republic [1957] E.A. 332** where the court expressed itself as follows:

> ***"Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one "which on full consideration might possibly be thought sufficient to sustain a conviction." This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is "some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence". A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence…It is may not be easy to define what is meant by a "prima facie case", but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence."***

7. The court should therefore determine whether based on the evidence placed before it can convict if the accused chose not to give any evidence.

8. In **May vs. O'Sullivan [1955] 92 CLR 654** it was held that:

> ***"When at the close of the case for the prosecution a submission is made that there is no case to answer, the question to be decided is not whether on the evidence as it stands the defendant ought to be convicted, but whether on the evidence as it stands he could lawfully be convicted. This is a really question of law."***

9. The court need not go through the evidence at this stage as there is a danger of making definitive findings, especially where the Court is of the view that there is a case to answer. This was well stated by the court in the case of **Festo Wandera Mukando vs. The Republic [1980] KLR 103** where it stated as follows;

> ***"…we once more draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgement. Where a submission of "no case" is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should***

be given; for then that is the end to the case or the count or counts concerned."

10. From the foregoing and without delving into the merits of the prosecution's case it is my opinion that the prosecution has established a *prima facie* case to warrant the accused being put on the defence in terms of section 306 (2) of the Criminal Procedure Code.

Signed, Dated and Delivered at Meru this 13th day of November, 2025.

H. M. NYAGA
JUDGE