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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CRIMINAL CASE NO. E011 OF 2024

REPUBLIC.....
....PROSECUTOR

VERSUS

GEORGE WAIRUGI GACIKU.....
ACCUSED

R U L I N G

Brief Facts

1. This is a ruling on whether there is a case to answer. The accused person was initially charged with the offence of murder contrary to Section 203 as read with 204 of the Penal Code. On 17/03/2025 the accused entered into a plea agreement which was duly executed by the parties.
2. On 27/03/2025, the accused pleaded guilty to a lesser charge of manslaughter contrary to **Section 202 as read with 205 of the Penal Code**. The accused person on 2/7/2025 changed his plea to not guilty and the prosecution reinstated the charge of murder. The plea was taken on 3/7/2025 whereas the accused person pleaded not guilty to the charge of murder.

3. The prosecution called eleven (11) witnesses in this case. The defence counsel Mr. Mathenge opted not to put in submissions on no case to answer.
4. Having carefully perused the evidence of the prosecution witnesses, I am of the opinion that the prosecution has established a *prima facie* case. The Court of Appeal in the case of **Antony Njeru vs Republic [2006] eKLR** described the manner in which the court should frame its ruling for a case to answer. The court said: -

“Taking into account the evidence on record, what the learned Judge said in his ruling on no case to answer, the meaning of a prima facie case as stated in Bhatt’s (supra), we are of the view that the appellant should not have been called upon to defend himself as all the evidence was on record. It seems as if the appellant was required to fill in the gaps in the prosecution case. We wish to point out here that it is undesirable to give a reasoned ruling at the close of the prosecution case, as the learned Judge did here unless the court concerned is acquitting the accused person.”

5. Relying on that case, it is not necessary at this point to state in the ruling herein the analysis of totality of the prosecution’s evidence since in my considered view, the accused has a case to answer. The holding the Court of

Appeal in my view was intended to prevent a scenario where the court would pre-empt the case of the defence.

6. As such, I hold the opinion that the prosecution has established a *prima facie* case against the accused person. The accused person has a case to answer and is hereby called upon to give his defence.

7. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
AT THIKA THIS 13TH DAY OF MARCH 2026.***

**F. MUCHEMI
JUDGE**