



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 85 OF 2019

REPUBLIC.....PROSECUTION

VERSUS

ROSALIAH NANTO.....1ST ACCUSED

JANE MWENDWA.....2ND ACCUSED

RULING ON CASE TO ANSWER

1. The accused are jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that they “*on the 3rd day of November 2019 at Kithara village, Munithu sublocation, Ngine location, Miriga Mieru East Division Imenti North sub-county within Meru County jointly murdered SAMUEL MUTUA MUGAMBI.*” The accused persons pleaded not guilty to the charge and the matter proceeded to trial, the prosecution calling 7 witnesses to prove the charge.

2. The court has considered as required under section 306 of the Criminal Procedure Code whether there is the evidence that the accused persons or any of the accused persons committed the offence. At this stage, the court considers the prosecution evidence to establish whether a *prima facie* case exists, which as held in *Ramanlal T. Bhatt v. R (1957)* EA 332, 335 is “*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.*”

3. Where the court has considered that there is **not** established a *prima facie* case, the accused is entitled to an acquittal, see *Murimi v. R (1967)* EA 542 and *Wachira v. R (1975)* EA 262, and the Court is required to give full reasons for the decision but not so where the court finds that a *prima facie* case has been established as held in *Kibera Karimi v. R (1979)* KLR 36 (Trevelyan & Todd JJ) so as not to prejudice the fair trial of the case by giving the impression that the court has already made up its mind without hearing the defence. See also *Festo Wandera Mukando v. R (1976 – 80)* KLR 1626 and *Antony Njue Njeru v. R*, Nairobi C.A. Cr. Appeal No. 77 of 2006 (2006) eKLR.

4. However, for the same reason, not to prejudice the fair trial of the other accused person(s) in cases of multiple accused, the court does not exhaustively discuss the merits of the case(s) against the accused who may be acquitted for want of *prima facie* case at the close of the evidence for the prosecution. The case against the accused who is acquitted at the close of evidence for the prosecution shall be discussed in the full judgment at the end of the trial.

5. Having considered the prosecution evidence against the ingredients of the offence of murder on the alleged involvement of the accused persons in the offence, the court finds that as regards the 2nd accused, in the words of section 306(1) of the Criminal Procedure Code, there is the evidence that the accused person committed the offence.

6. As regards the 1st accused, the court does **not** find that a *prima facie* case for the offence of murder c/s 203 as read with 204 of the Penal Code has been established, and a finding of not guilty is entered on the said accused person pursuant to section 306 (1) of the Criminal Procedure Code.

ORDERS

7. Accordingly, as regards the 1st accused **ROSALIAH NANTO** against whom no *prima facie* case has been established on the evidence produced by the prosecution, a finding of not guilty is entered pursuant to section 306 (1) of the Criminal Procedure Code and she is, consequently, acquitted and there shall be an order for her immediate release unless she is otherwise lawfully held.

8. The 2nd accused **JANE MWENDWA** shall be put on her defence in accordance with section 306 (2) of the Criminal Procedure Code, and her rights thereunder shall be explained.

Order accordingly.

DATED AND DELIVERED ON THIS 15TH DAY OF DECEMBER, 2021

EDWARD M. MURIITHI

JUDGE

Appearances

Ms. Mwilaria for the Accused persons

Ms B. Nandwa Prosecution Counsel for the State.



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