



Republic v TMM (Criminal Case 8 of 2016) [2024] KEHC 9740 (KLR) (30 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9740 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL CASE 8 OF 2016**

FROO OLEL, J

JULY 30, 2024

BETWEEN

REPUBLIC STATE

AND

TMM ACCUSED

RULING

A. Background

1. The accused herein TMM was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars being that the accused on 16th January, 2016 at Kwa Koko village, Kithimani Location, Yatta Sub County within Machakos County murdered PMM.
2. The hearing took off and the prosecution called a total of Eight (8) witnesses. PW1 B.M.M a son of the accused and the deceased, gave unsworn evidence and narrated how the accused came back home drunk and caused chaos's by chasing him and the deceased out of the house and they had to get the landlady's help to calm down the accused person. The accused was given the items he wanted and the deceased closed the door. The accused then hit the window with a stone and PW1 heard the deceased cry out aloud. She lit a candle and he saw the deceased bleed profusely from her neck region. He opened the door, the deceased stepped out walked for about five meters and fell down. The accused came back and accused her of feigning her injury and swore that he would one day kill her. He got the deceased phone and called his uncle to come help them. Neighbor's also come to assist but unfortunately his mother died.
3. PW2 Agnes Mutheu Mwatu confirmed that she was the deceased landlord and corroborated PW1's evidence, that the deceased called her to intervene in their domestic problem and she found the deceased and the accused abusing each other. The deceased gave the accused his blanket and battery through the broken window. She decided to go and inform her husband of what was happening and, while enroute she heard a piercing scream, and she came back as she had just gone a short distance. she saw the deceased seated down, and PW1 was standing beside her. The deceased was bleeding profusely from



- her neck. She tried to get help and called some vehicle owner to come take the deceased to hospital, but unfortunately it was too late and she ended up dying at the scene. PW3 Joseph Kyengo Munandi a neighbor also came to the scene and found the deceased bleeding from her neck. He is the one who called the police from Yatta police station. They tried getting means to get her to hospital but the lady died at the scene.
4. PW4 EW was called by his nephew PW1 and they rushed to Matuu hospital and unfortunately found that PW1's mother had passed on. She had a deep cut on her neck. PW5 DMM was also a brother in law of the deceased and identified her body at Montezuma funeral home and after post mortem had been conducted it was confirmed that she had died of a cut wound on her neck.
 5. PW6 Damaris Mutheu was the deceased immediate neighbors and recalled that on the day of the incident 16.01.2016 at about 1.00am, she heard PW1 asking his dad, why he was beating the deceased. She saw the deceased leave the house and the accused followed them. Later the accused came back, and left with his motor cycle. Later on at night the accused came back and the deceased refused to open for him the door. The accused started hurling abuses and the landlady intervened and the deceased gave the accused his cloths through the window. After a while she heard PW1 scream that the accused has killed mum. PW1 opened the door and the deceased came out and fell down on the ground. The accused went on lay on the deceased chest and told her that he would kill her. This occurred in her presence and she was the one standing with PW1. The accused did not see her. In cross examination she stated that she was an immediate neighbor and heard the couple quarrelling. There was no third party who went into the deceased house.
 6. PW7 Dr Geoffrey Mutuma, stated that he was a qualified medical doctor and a trained Forensic pathologist. On 19.01. 2016, he did conduct a post mortem on the body of the deceased and his findings were that she had a cut wound on the left neck region 10 cm in length. Upon opening her body, the left cavorted Artery and vein were cut with surrounding haematoma. He formed the opinion that the cause of death was hemorrhage following cut wound on the neck involving a major blood vessel. PW8 SGT Geoffrey Mboya testified that on 16.01.20216 at about 5.30am two boda boda riders had reported at Yatta police station that a certain woman had been assaulted by her husband at Kwa Makaa area, Kithimani Market and she was bleeding in the house.
 7. They rushed to the scene of crime and found that the lady who had been assaulted had died. Investigations revealed that the accused and the deceased were married and on the material night they had a domestic dispute and had quarreled. At about 4.00am the accused had come back and started quarrelling again. PW2 intervened and ordered the accused to leave. He insisted on being given his belonging's, which were thrown out to him through the window pane which was already broken. In the process the accused stabbed the deceased through the window with a sharp object and fatally wounded her. At the scene they recovered the accused motor cycle as well as LG Mobile phone. Later the accused surrendered himself at Lunga lunga police station and was re-arrested.
 8. I have considered the evidence so far from the prosecution's side, the submissions made by the accused and the authorities cited. The issue before me at this stage is whether the evidence so far adduced warrants calling upon the accused to defend herself. In other words, does the accused have a case to answer? In Republic vs. Abdi Ibrahim Owl [2013] eKLR a prima facie case was defined as follows: -

“Prima facie” is a Latin word defined by Black's Law Dictionary, 8th Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “Prima facie case” is defined by the same dictionary as “The establishment of a legally required rebuttable



presumption”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with.

9. In *Ramanlal Trambaklal Bhatt v. R* [1957] E.A 332 at 334 and 335, the court stated 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.”

10. In *Ronald Nyaga Kiura vs. Republic* [2018] Eklr, The court of Appeal did state that;

“It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the Criminal Procedure Code. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person. This is well illustrated in the cited Court of Appeal case of *Ramanlal Bhat -vs- Republic* [1957] EA 332. At that stage of the proceedings the trial court does not concern itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence.”

11. The question that this court has to deal with and answer at this stage is therefore, whether based on the evidence before this Court, the Court after properly directing its mind to the law and the evidence may, as opposed to will, convict if the accused chose to give no evidence.

11. That there is a danger in making definitive findings at this stage, especially where the Court finds that there is a case to answer is not farfetched and the reasons for not doing so are obvious. As was appreciated by Trevelyan and Chesoni, JJ in *Festo Wandera Mukando vs. The Republic* [1980] KLR 103:

“...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.”

11. Accordingly, I will refrain from delving further in this matter. Having considered the material placed before me I am satisfied that the prosecution has established a prima facie case for the purposes of



a finding that the accused has a case to answer. As to whether the said evidence on record meet the threshold for convicting the accused is a matter that will have to be considered at the end of the trial.

12. I accordingly place the accused on his defence.

13. It is so ordered.

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 30TH DAY OF JULY, 2024.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 30TH DAY OF JULY, 2024.

In the presence of:-

Accused absent

Mr. Musya for accused

Ms Otulo for O.D.P.P

Susan/Sam Court Assistant

