Republic v Nyamu & another (Criminal Case 20 of 2018)
[2024] KEHC 10741 (KLR) (29 August 2024) (Ruling)

Neutral citation: [2024] KEHC 10741 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT CHUKA

CRIMINAL CASE 20 OF 2018

LW GITARI, J

AUGUST 29, 2024

BETWEEN

REPUBLIC ..... PROSECUTOR

AND

AULENCIA KATHAMBI NYAMU ..... 1ST ACCUSED

DENNIS KIBAKI ..... 2ND ACCUSED

RULING

1. The accused person Aulencia Kathambi and Dennis Kibaki are charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* (Cap 63 Laws of Kenya).

2. The particulars of the charge are that on 23/9/2018 at Makambani village Kamuka Sub-Location within Tharaka Nithi County the two accused murdered Johana Kathuri. The charge is contained in the information filed in this court on 17th January 2019 which consolidates the two cases as the accused were initially separately charged. The accused person denied the charge. The prosecution called five (5) witnesses and closed their case. This is now a ruling to determine whether the accused persons have a case to answer on the charge as required under Section 306(1) of the *Criminal Procedure Code* (Cap 75 Laws of Kenya).

3. In this case the prosecution called five (5) witnesses. I have considered their testimonies. It is the duty of this court at this stage to determine whether the prosecution has established a *prima facie* case to warrant the accused person to be put on their defence. The test of a *prima facie* case was laid down in the case of *Ramankal Trambaklal Bhatt v Republic* (1957) EA 332 where the court stated, "A *prima facie* case is one on which a reasonable tribunal properly addressing its mind to the facts (evidence) and the law could convict if no explanation is offered by the defence."

4. This forms what this court is supposed to consider to come to findings as to whether the accused should be put on their defence. It is trite law that if the court comes to the conclusion that the accused has a case

to answer, it should not give reasons for that determination without giving the accused an opportunity to be heard on his defence. This is meant to avoid a situation where the court would appear to have come to its conclusion before the hearing and determination whether the defence is plausible. This is necessary for the court to avoid allegations of bias. Having thus stated.

5. I can confirm that I have carefully considered all the evidence which was tendered by the prosecution in support of their case. The charge of murder is proved against an accused person if he causes the death of a person through un-lawful acts with malice aforethought. This is what is commonly called the 'actus reus' (unlawful acts) and 'mens rea' (the intention to cause death). Having considered the evidence by the prosecution, I am satisfied that the prosecution has adduced sufficient evidence which has established a *prima facie* case to warrant the accused to be put on their defence as charged. The accused are called upon to give their defence.

6. In compliance with Section 306(2) of the *Criminal Procedure Code* (Cap 75 Laws of Kenya) The accused are informed that they can opt to give their defence on oath in which case the prosecution will be at liberty to cross-examine them or he can opt to give a unsworn defence in which case they will make statutory statements and shall not be cross-examined. The accused can also opt to keep quiet. The accused also have the option to address the court through his advocate. The accused are also at liberty to call a witness or witnesses in support of their case.

L.W. GITARI

JUDGE

29/8/2024