Republic v Musyoka (Criminal Case 17 of 2020)
[2024] KEHC 11599 (KLR) (30 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11599 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL CASE 17 OF 2020

FROO OLEL, J

SEPTEMBER 30, 2024

BETWEEN

REPUBLIC ..... PROSECUTION

AND

JOHN MUTISO MUSYOKA ..... ACCUSED

RULING

1. The accused, John Mutiso Musyoka, is charged with the offence of murder contrary to section 203 as read section 204 of the Penal Code. It was alleged that on 9th day of May 2020 at Mutituni market, Mutituni location in Machakos County, he murdered one Ann Ndungu Kiua.

2. The prosecution called twelve (12) witnesses who testified on their behalf as to what had transpired on the material day. Specifically, PW5 Jacinta Nzilani testified that on the material day, she was walking with the deceased to work and on the way they met the accused who she knew to be the deceased boyfriend. She left them talking and shortly while about 30m ahead, she heard the deceased screaming that she was being killed, and on turning back she noticed that the deceased had been stabbed and had fell down. On the material day, the accused was wearing a yellow and green jacket and later after he had been arrested, she took part in an identification parade where she identified the accused as the person last seen with the deceased.

3. PW 9 produced the crime scene photographs, PW 10 also proceeded the crime scene and secured the blood stain knife used to stab the deceased. PW11 produced the post mortem report and PW12 further did produce the DNA results on the blood-stained knife and blood stain yellow jacket recovered from the accused person.

4. I have considered the evidence so far adduced from the prosecution's side, and the issue before me at this stage is whether the evidence so far adduced warrants calling upon the accused to defend himself.

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.

5.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."

6. 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. 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: where the court did find that

> " ...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."

5. Accordingly, without 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.

6. I accordingly place the accused on his defence.

7. It is so ordered.

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

FRANCIS RAYOLA OLEL

JUDGE

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

In the Presence of;

Mr. Langalanga for the Accused

Mr. Mongare for ODPP

Sam Court Assistant

Accused present in court