



Republic v Idd (Criminal Case 65 of 2019) [2023] KEHC 2644 (KLR) (30 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2644 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 65 OF 2019
RN NYAKUNDI, J
MARCH 30, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

MUSTAFA IDD ACCUSED

RULING

1. The accused person is charged with murder contrary to Section 203 as read with Section 204 of the *Penal code*. The brief particulars of the offence are that on September 30, 2019 at Meja Village in Moi's Bridge sub-location within soy Sub-County murdered Emma Makinia Wanyota. In the first appearance before court, the accused had pleaded not guilty set in motion the prosecution to present evidence on the ingredients of the offence which must be proved beyond reasonable doubt. In this respect, 6 witnesses took the witness stand in support of the case in prosecution against the accused
2. At the end of the prosecution case, it becomes the duty of this court to rule on a motion of no case to answer or in the alternative to establish whether there is a *prima facie* case to warrant the accused be placed on his defense. According to section 306 of the *Criminal Procedure Code*, if the court makes a no case ruling the accused person will be discharged. Whereas on the other hand if the prosecution establishes a *prima facie* case against the accused he or she will be asked to enter into his or her defense.
3. In order to answer the issues raised in Section 306 (1)& (2) of the Criminal Procedure Code, it is necessary to delve into the principles governing the concepts of no case submissions and that of a *prima facie* case. In respect to a no case to answer the following guiding principles provide guidance towards the final determination of the application. In the case of *Akunugo V FRN* (2008) LPELR -1105(SC) where the court say: "The position of the law is that a submission that there is no case to answer by an accused person means that there is no evidence on which even if the court believed it, it could convict. In other words, certain essential elements of the offence for which the accused stands charged was not proved by the prosecution. No evidence was led to prove such essential element. The question whether or not the court believed the evidence led does not arise at the state of the proceedings. The credibility



of the witnesses also does not arise at that stage. This is because the trial of the case was at that stage not included. This is therefore the reason why the court should not concern itself with the credibility of witnesses or weight to be attached to the evidence even if they are accomplices”

4. What about a *prima facie* case definition? . The court in the case of *Ajoboye & Another v State* (1995) LPELR-300 (SC) per Kutigi JSC stated thus:

“What then is “ a *prima facie* case? In the case of *Ajidagba & ORS V IGP Abbot* FJ said on page 6 of the report thus “ we have been at some pains to find the definition of the term “*prima facie* case.”. The term so far as we can find has not been defined either in the English or in Nigerian courts. In an Indian case however, *Sher Singh V Jitendranathsem* (1931) LR CAL 275 we find the following dicta:- what is meant by a *prima facie* (case)? It only means that there is a ground for proceeding.....But a *prima facie* case is not the same thing as proof which comes later when the court has to find whether the accused is guilty or not guilty (per Grose J) and ‘the evidence discloses a prima case when it is such tht if uncontracted and if believed it will be sufficient to prove the case against the accused.”

5. In line with the above principles from comparative jurisdiction, the court in *Ramanlal Tambaklal Bhatt vs R*(1957) E A 332, at 335 appreciating the elements of the phrase *prima facie* case went on to state 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’s case, the case is merely one in which on full consideration might possible 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 questionthere 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 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, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”.

I have carefully looked at the admitted evidence, in so far as the following ingredients for the offence of murder are concerned. First the deceased is dead, secondly whether his death was unlawfully caused. Thirdly, whether in causing death, the perpetrator was actuated with malice aforethought and finally, whether the accused person before court is the one culpable for committing the offence against the deceased. Applying the facts of the present case to the principles governing a no case to answer motion and what constitutes a *prima facie* case I find that a reasonable tribunal is likely to convict the accused if he decides to remain silent after the close of the prosecution case. I therefore make a finding that the prosecution discharged the burden of proof of establishing a *prima facie* case to warrant this court to exercise discretion to place him on his defence in terms of section 306 (2) as read with 307 of the [Criminal Procedure Code](#).

It is so ordered

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 30TH DAY OF MARCH 2023

.....
R NYAKUNDI

JUDGE



**In the Presence of
Mr Mugun for the State
Accused in Person.**

