



REPUBLIC OF KENYA



Republic v Sweta (Criminal Case 20 of 2018) [2023] KEHC 17902 (KLR) (31 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17902 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE 20 OF 2018**

RE ABURILI, J

MAY 31, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

DEDAN OUMA SWETA ACCUSED

RULING

1. I have considered the evidence of the four (4) prosecution witnesses and the written submissions by the defence counsel. At this stage, the court is not considering whether proof of the case against the accused is made beyond reasonable doubt but whether a prima facie case has been made out by the prosecution to warrant placing the accused person on his defence.
2. Counsel for the accused has urged the court to find that the evidence of the witness who was stood down should not be relied upon. That witness took oath and testified to a certain extent before being stood down.
3. There is no reason why the court should not rely on that evidence in its determination since the witness was competently led through her testimony. The only question would be the weight and or probative value to be placed on that evidence, the court having ruled that the issue of marriage between her and the accused was a matter of sufficient evidence being raised and perhaps that why she was stood down.
4. On whether a prima facie case has been made against the accused person to warrant placing the accused person on his defence, I have considered the evidence on record and without delving into the merits thereto, I am satisfied that a prima facie case has been made out against the accused person to warrant him to be placed on his defence. A prima facie case, it should be noted, is not necessarily one that must succeed. The evidence by the witness who was stood down is not the only evidence which the prosecution called.
5. The question of whether that evidence proves the guilt of the accused person beyond reasonable doubt, whether he tenders his defence or not can only be determined at the end of the trial.



6. This court finds that the justice of this case demands that the accused be placed on his defence.
7. Accordingly, I find and hold that the accused person herein Dedan Ouma Sweta has a case to answer for the alleged murder of Victor Owuor Okita. He is accordingly placed on his defence and the provisions of Article 50 (2) (i) (k) and (l) of the Constitution are hereby complied with, as read with Section 306 (2) of the Criminal Procedure Code. I so find.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 31ST DAY OF MAY, 2023

R. E. ABURILI

JUDGE

