



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NUMBER 45 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

SAMUEL NDUNGU NYOKABI.....ACCUSED

R U L I N G

1. **Samuel Ndungu Nyokabi** was charged with the offence of **Murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 Laws of Kenya**. The particulars of the charge are that on 6th September, 2019 at Kaburini Estate, Kiamaina Sub-Location in Nakuru North Sub-County, within Nakuru County, with others not before court, murdered **Joseph Thuo Samuel**.
2. On 18th September, 2019, the accused pleaded not guilty to the charge and the particulars thereof. It became the duty of the prosecution to tender evidence to establish the ingredients of the charge against the accused.
3. Eight (8) witnesses testified in support of their case.
4. At the close of the case for the prosecution the issue is whether they have established a prima facie case to warrant the accused being put on the defence.
5. **Section 306 (1) and (2) of the Criminal Procedure Code** provides for the procedure to be applied after the closure of the case for the prosecution.

“(1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.

(2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.”

6. What is then a prima facie case? This phrase was defined in *Mozley and Whiteleys Law Dictionary 5th Edition* as follows:

“A litigating party is said to have a prima facie case when the evidence in his favour is sufficiently strong for his opponent to be called to answer it. A prima facie case, then, is one which established by sufficient evidence, and can be overthrown only by rebutting evidence by the other side.”

7. The East African Court of Appeal pronounced itself in the celebrated case of *Bhatt vs Republic [1957] EA 322, 334 & 335* on prima facie case as follows:

“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.”

8. In this case there is no doubt that the deceased did not die of natural causes. The evidence of the pathologist confirms that the deceased was killed. PW2, the accused’s minor daughter told the court she saw her father strangle the deceased. All the prosecution witnesses confirmed that the deceased had injuries on his neck. The accused was the last person to be seen with the child alive and there is also

evidence on record that the accused intended to bury the deceased without notifying the relevant authorities of the unnatural death of the deceased.

9. Having considered the evidence on record I am of the view that the prosecution has indeed established a prima facie case to warrant the accused to place on his defence as provided for by **Section 306(2) of the Criminal Procedure Code**.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31ST DAY OF JANUARY, 2022.

MUMBUA T MATHEKA

JUDGE

In the presence of:

CA Edna

Ms Murunga for state

Ms Ogange for accused

Accused present