



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

CRIMINAL CASE NO. 4 OF 2018

REPUBLIC.....PROSECUTOR

-VERSUS-

NKONYE MAKEMBO MWENJA.....1ST ACCUSED

EDWARD NYAGA MURIITHI.....2ND ACCUSED

HARON KIMATHI MUBIRI ALIAS

KILONZO NKONYE.....3RD ACCUSED

PATRICK MUTHUI KAIBIRU.....4TH ACCUSED

JOSEPH MURIUNGI KAMWARA.....5TH ACCUSED

JOVANA NCUGU.....6TH ACCUSED

R U L I N G

1. The accused persons herein are charged with the of murder **contrary to Section 203 as read with Section 204 of the Penal Code** (Cap 63 of the Laws of Kenya).
2. The particulars of the offence are that on 9th October 2017 at Kamatindi village, Mauthini sub-location of Kanjoro location, Tharaka North sub-county within Tharaka-Nithi county, the accused persons murdered on Nyaga Makembo.
3. All the accused persons pleaded not guilty to the offence and matter proceeded to trial. The prosecution called a total of nine (9) witnesses in support of the charges against the accused persons before closing its case on 23rd November 2021.
4. This ruling thus seeks to determine whether the prosecution has made out a *prima facie* case against the accused persons that would warrant this court to call upon the said accused persons to give their defence. In other words, the issue for determination at this stage is whether the accused have a case to answer.
5. The law is well settled by several authorities as to what constitutes a prima facie case. The leading authority is the case of **Ramanlal T. Bhatt -v- Republic [1957] E.A. 332** where the court defined a *prima facie* case as one which a reasonable tribunal properly addressing its mind to the law and evidence, could convict if no explanation is offered by the defence.
6. At his stage the court is called upon to evaluate the testimonies of each of the eight (8) prosecution witnesses who gave evidence in support of the charge of murder that the accused person is facing. Having considered the evidence tendered by the prosecution, it is my finding that the evidence presented by the prosecution before this court meets the threshold in the case of **Bhatt -v- R (supra)**. In the case it was stated:

“Remember 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..... “ It is not easy to define what is meant by a prima facie case,” but at least it must be 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.”

This has been the leading authority and can be stated to be good law on the subject of *prima facie* case. The establishment of a *prima facie* case is taken to mean that there is legally required rebuttable presumption. This does not however mean that the accused is called upon to prove his innocence is supposed to offer an explanation if he wishes to do so.

7. At this stage, no reasons need to be given for this finding as this court is yet to hear the side of the story of the accused person and giving reasons would amount to determining the case without giving them an opportunity to be heard (See: **Republic -v- Samuel Karanja Kiria [2009] eKLR**).

8. It is sufficient at this juncture to inform the accused persons whether they have a case to answer and give them a chance to be heard. Based on the evidence tendered by the prosecution up to the close of their case, it is my view that there is sufficient evidence to warrant the accused persons to be put on their defence as charged.

9. In conclusion, I order as follows:

1) The accused have a case to answer

2) Under **Section 306(2) of the Criminal Procedure Code** (Cap 75 Laws of Kenya) the accused are informed of their right to address the court either personally or through their advocate, to give evidence on his own behalf, to make unsworn statement and call witnesses if any.

Dated, signed and delivered at Chuka this 27th day of January 2022.

L.W GITARI

JUDGE