

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 34 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

GODFREY KIPKEMOI KANGOGO..... ACCUSED

RULING

1. Godfrey Kipkemoi Kangogo (the “Accused Person”) is charged with murder contrary to section 203 as read with section 204 of the Penal Code. He is accused of the murder of Irene Jepchumba Boitt (“Deceased”) on 06/07/2018 at Molo River in Rongai Sub-County within Nakuru County.

2. The Prosecution called 26 witnesses in a bid to prove its case. Its theory is that the Accused Person lured the Deceased to the Choka Falls on Molo River and then pushed her down the raging falls. The Prosecution claims that the Accused Person, then, pretended that the Deceased had accidentally fallen into the river.

3. At this point in the trial, with the Prosecution having closed its case, the Court is required to determine if the Prosecution has established a prima facie case sufficient to put the Accused Person on his defence. The test to be utilized is the famous one stated in *Bhatt –vs- R [1957] EA 332*: whether, as a matter of law – without taking any conclusive view of the credibility and probative value of the evidence presented – the Prosecution has adduced *reasonable sufficient evidence* of the matter in respect of which it has the burden of proof. Reasonable sufficient evidence is one which a reasonable tribunal could convict.

4. At this point in the case, it would be improper to assess the strength or weakness of the prosecution evidence by taking a view of the witness reliability unless I came to the conclusion that the state of the evidence called by the Prosecution, taken as a whole, is so unsatisfactory, contradictory, or so transparently unreliable that no court, properly directing its mind, could properly convict on the evidence. In my view, this forbiddingly high threshold is not met here, since there is some evidence which, if accepted and “taken at its highest”, would entitle the Court to convict. At this point, the less I say, the better.

5. Taking this test and standard into consideration, the Prosecution has placed enough material to make this a fit case to require the Accused Person to respond to the evidence adduced.

6. Consequently, the Court finds that the Accused Person has a case to answer and puts him on his defence. The case shall be set down for defence hearing.

Dated and Delivered at Nakuru this 28th day of April, 2022

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JOEL NGUGI

JUDGE

