



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NO. 12 OF 2018

REPUBLIC.....PROSECUTOR

-VERSUS-

JOSEPH KIPYEGON LANGAT.....ACCUSED

RULING

1. Joseph Kipyegon Langat (Accused) is charged with the offence of murder contrary to section 203 of the Penal Code. The particulars of the charge are that on the 30th day of May 2018 at Chepkosa location in Chapalungu sub-county within Bomet county murdered John Kipsang Cheruiyot.

2. The Accused pleaded not guilty to the charge and the case proceeded to full hearing in which the Prosecution has called a total of 12 witnesses and closed its case.

3. This stage of the proceedings requires the Court to establish whether a *prima facie* case has been established by the Prosecution. The Black's Law Dictionary, 10th Edition at page 1382 defines a *prima facie* case as follows:

“Sufficient to establish a fact or raise a presumption unless disproved or rebutted, based on what seems to be true on first examination even though it may later be proved to be untrue...A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favour.”

4. In the case of **Republic vs. Abdi Ibrahim Owl [2013] eKLR** a *prima facie* case was defined as follows: -

“Prima facie” is a Latin word defined by Black's Law Dictionary, 8th Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “Prima facie case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with. In Ramanlal Trambakal Bhatt v. R [1957] E.A 332 at 334 and 335, the court stated 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, the case is merely one “which on full consideration might possibly 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 question whether there 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 is 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 tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.’

5. It therefore behoves this Court to consider the entire evidence adduced by the Prosecution and arrive at a finding whether or not a *prima facie* case has been established. In doing so, the court must be cautious not to analyze the evidence in depth as a whole at this stage. This was the persuasive guidance provided by Ojwang J. (as he then was) in the case of **Republic vs. Karanja Kiria Criminal Case No. 13 of 2004, Nairobi (2009) eKLR**, when he explained thus:-

“The question at this stage is not whether or not the accused is guilty as charged but whether there is such cogent evidence of his connection with the circumstances in which the killing of the deceased occurred, that the concept of prima facie case dictates as a

matter of law that an opportunity be created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled.....

The Court of Appeal in Criminal Appeal No. 77 of 2006, expressed that too detailed analysis of evidence, at no case to answer stage is undesirable if the court is going to put the accused onto his defense as too much details in the trial court's ruling could then compromise the evidentiary quality of the defense to be mounted."

6. I have considered the testimonies of the witnesses now on record and it is not in doubt that the victim was found dead in River Nyangores. From the evidence and exhibits produced and the submissions of the parties, I am satisfied that a *prima facie* case has been established against the Accused by the Prosecution.

7. The Accused therefore has a case to answer and is hereby called upon to elect his mode of defence in accordance with **Section 306 of the Criminal Procedure Code**.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 28TH DAY OF APRIL, 2022.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the absence of the Accused, Ms. Boyon for the State, Mr. Kenduiwo for Accused and Kiprotich (Court Assistant).