



**Republic v Onyoni (Criminal Case 31 of 2020)
[2022] KEHC 10695 (KLR) (29 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10695 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 31 OF 2020
TM MATHEKA, J
JUNE 29, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

LUSALIAH MORAA ONYONI ACCUSED

RULING

1. The accused herein Lusaliah Moraa Onyoni is charged with the offence of Murder Contrary to Section 203 as read together with section 204 of the [Penal Code](#). The particulars of the offence are that on 10th August, 2020 at Sakaitim Village, in Molo Sub-County within Nakuru County, she murdered Charles Omari Mangoiya.
2. On 30th September 2020 the charge was read to the accused person and she pleaded not guilty She was represented by Mr. Mong'eri.
3. PW1, Thomas Muragwa Mose, the Senior Assistant Chief Kirandi Sub location testified that on 11th August, 2020, at about midnight, he received a phone call from Mzee wa Nyumba Kumi that Rosalia Moraa also known as "Blackie" had gone to his house to report that she had found her friend Charles dead on the road near her house. The following day he called the police, reported the matter and the police officers visited the scene. He stated that he also visited the scene where he found the deceased's body lying on its back with its head a bit turned and blood oozing from the mouth. He said the body appeared like it had been dragged from somewhere and that blood stains were found in the accused person's house.
4. PW2, Gishon Okeyo Mangoiya, a brother to the deceased, testified that on 11th August, 2020 at about 8 a.m. he received a phone call from the deceased's wife that the deceased had been found dead. He said the deceased's body was found near the accused person's house and did not know whether the



- deceased had a relationship with the accused. On 19th August, 2020, he proceeded to Molo Mortuary where he identified the deceased's body for postmortem.
5. PW3, Felix Michael Omari, was a son to the deceased. He testified that on 11th August, 2020 at about 7.00 a.m. he received a phone call from his brother John Omari that his father had died. He went to the scene where he found the deceased lying dead on the ground near the accused person's house. He observed the body and saw injuries on the eye and left arm, and bleeding from the mouth and nose. He said the police officers visited the scene and took photographs and together with the police officer they went to the accused person's house and they saw blood. It was his testimony that the accused was the deceased's "mpango wa kando" and that the deceased used to go frequently to the accused person's house.
 6. PW4, Eunice Njeri Chege, testified that she was neighbour to the accused and knew her and the deceased to be husband and wife. On 10th August, 2020 at 11.30 pm the accused went to her house and informed her that she had found her husband lying dead on the road. She said she knew the deceased and had not seen him on that fateful day but a day prior the incident in the evening at around 5:00 p.m. she called her husband one Peter Gitau and the accused in her presence similarly told him the same thing and they decided to call the chief, PW1 to inform him about the incident. He told them that the issue would be dealt with the next day and they went back to sleep. She confirmed the next day she did not go to the crime scene.
 7. PW5, John Muhia, was Nyumba Kumi to whom the accused and PW4 went for help said that the deceased was in a relationship with the accused and that his body was found near the house of the accused person.
 8. PW6, Dr. Risper Mutindi, was a Medical Officer from Molo Sub-County Hospital who she conducted the post mortem on the deceased body on 19th August, 2020 at Molo Sub County Hospital. She formed an opinion that the cause of death was as a result of traumatic brain injury from blunt object and severe hemorrhage. It was her testimony that the contusion was on the head and inside the brain and confirmed that hemorrhage can be caused by a fall. She however clarified that the contusion she observed were not as a result of a fall.
 9. PW7, Polycap Lutta Kweyu was a government analyst who testified that on 15th October, 2020, he analyzed the blood stains in jacket, soil, trouser that were submitted to him by the police. The blood stains were all human blood. The DNA profile of the blood confirmed the blood on jacket, soil, and trouser and from nails of the deceased belonged to the deceased. He concluded that the blood from all these items was from the deceased and said that the DNA profile of the accused did not match any of the DNA from these samples. She prepared a report and exhibit memo on 18th February, 2022 and produced the same as P. Exhibits 6 & 7 respectively.
 10. PW8, No. 112795 PC Juma Mweni, recalled that on 11th August, 2020 at 9.00a.m, Molo CI Hassan Yatani directed him to investigate the murder case that had been reported to him by the assistant chief Thomas Mose from Sakaitim Village. In company of his two colleagues PC Muasi Msengoe and Driver PC David Githui they proceeded to the scene at Sakaitim where they found deceased body lying facing up on a feeder road. There was a crowd at the scene who wanted to lynch the accused after finding blood in her house. He rescued her and after interrogating her for a while she led them to her house which was near the scene. They saw the room was disorganized like there had been a fight inside and found a blood stained jacket, and saw fresh blood on the soil. The accused could not explain the state of her room. He arrested her, processed the scene and moved the deceased's body to Molo Sub County Mortuary. He said that he charged the accused with the offence before court because she could not explain how the blood got into her house, deceased's body was 10m from her house and she was in a



relationship with the deceased. He denied that he was framing the accused because she was an illicit brew seller.

11. At the close of the prosecution case both the advocates for the accused and the state chose not to make any submissions on case to answer.
12. The only issue is whether the prosecution has established a prima facie case to warrant her being put on the defence.
13. The court's duty at this juncture is provided for under section 306(1) and (2) of the [Criminal Procedure Code](#) which provides for what should happen at the close of case for 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.”

14. 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 Trambaklal 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.”

15. Guided by the case law and statute, it is not a disputed fact that the deceased died. The prosecution has led evidence to the effect that the accused had a relationship with the deceased and had been seen



with him a day before died, witnesses testified that she reported to them that her husband was dead on the road side, hence triggering this whole matter. Evidence before the court is that there was blood matching the DNA of the deceased in her house.

16. At this stage the issue is not about proof beyond a reasonable doubt but about Prima facie evidence connecting the accused to the death of the deceased and there is evidence that she was with him not long before he was found dead.

17. This is illuminated in *Republic vs Robert Zippor Nzilu* [2020] eKLR when the court held that:-

“Whereas upon consideration of the totality of the evidence at the end of the trial, the court may well find that the prosecution has failed to prove its case beyond reasonable doubt, it is my view that that is not the same thing as saying that a prima facie case has not been made out. As has been said time and again a prima facie case does not necessarily mean a case which must succeed. In other words, despite finding that a prima facie case has been made out, the Court is not necessarily bound to convict the accused if the accused decides to maintain his silence. At the conclusion the Court will still evaluate the evidence as well as the submissions and make a finding whether, based on the facts and the law, the prosecution has proved its case beyond reasonable doubt, which is not the same standard applicable to the finding of existence of a prima facie case for the purpose of a case to answer.”

18. It is my view that the prosecution has established a prima facie case to warrant the accused being put in the defence vide Section 306(2) of the Criminal Procedure Code.

19. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 29TH DAY OF JUNE, 2022.

Mumbua T. Matheka,

Judge.

In the presence of;

CA Edna

Ms. Murunga for state

Mr. Mong'eri for the accused

Accused present

