



Republic v Too (Criminal Case 30 of 2016) [2022] KEHC 11603 (KLR) (28 July 2022) (Ruling)

Neutral citation: [2022] KEHC 11603 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 30 OF 2016**

JM NGUGI, J

JULY 28, 2022

BETWEEN

REPUBLIC STATE

AND

VIOLA CHEPKURUI TOO ACCUSED

RULING

1. In this case, the Prosecution marshalled nine witnesses to substantiate its theory that the Accused Person, Viola Chepkurui Too (“Accused Person”) is guilty of murder. The victim of the alleged murder is Bernard Ng’etich (“Deceased”). The Prosecution alleges that the murdered occurred on the 27th day of May, 2016 at Salгаа Trading Centre in Rongai Sub-County within Nakuru County.
2. The accused person pleaded not guilty.
3. The prosecution theory is that the accused person was a sex worker who had thedeceased as a client on the night of the murder. The two disagreed in the night and the accused person stabbed him in the chest with a kitchen knife. The deceased was found lying a few metres from the door leading to the accused person’s house. Some traces of blood was discovered in theaccused person’s house – on the door frame and the window curtains.
4. Shortly after thedeceased’s body was discovered, the accused person disappeared from the Salгаа area, abandoning his two children in the process. He was ultimately traced through a mobile phone and was charged with the offence.
5. Mr. Ombati, the defence counsel, vehemently argued that there is simply no sufficient evidence to put the accused person on the defence – arguing mainly that the Government Chemist Report did not link the accused person to the murder and further that there was no eye witness to the murder.
6. At this point in the trial, 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 v 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 on which a reasonable tribunal could convict.

7. 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.
8. 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.
9. 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 JULY, 2022

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JOEL NGUGI

JUDGE

