Republic v Langat (Criminal Case 4 of 2019)
[2022] KEHC 15577 (KLR) (23 November 2022) (Ruling)

Neutral citation: [2022] KEHC 15577 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BOMET

CRIMINAL CASE 4 OF 2019

RL KORIR, J

NOVEMBER 23, 2022

BETWEEN

REPUBLIC ..... PROSECUTOR

AND

COLLINS KIPKIRUI LANGAT ..... ACCUSED

RULING

1. The accused was charged with murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the charge were that on the January 16, 2019 at between field 45 and 46 of Itare division Koiwa zone of Unilever Kenya tea Ltd in Konoin Sub County within Bomet County jointly with others not before court murdered one Julius Korir.

2. On February 25, 2019, the Accused pleaded not guilty and the case went into full trial in which the prosecution called a total of fifteen (15) witnesses.

3. At this stage of the proceedings what the court is required to do is to establish whether a *prima facie* case has been established. In *Republic v 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] EA 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 true, as Wilson, J said, that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that determination can only properly be made when the case for the defence has been heard. It 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."

4. In *Martin Makhakha v Republic* (2019) eKLR, the Court of Appeal held that:-

> " The basis of putting an accused on his defence is founded on the prosecution establishing a prima facie case. The standard of proof as to whether the prosecution has established a prima facie case has been laid down in the case of Ramanlal Trambaklal Bhatt v Republic (1957) EA 332 and stated with approval by this Court in the case of Anthony Njue Njeru v Republic [2006] eKLR Criminal Appeal 77 of 2006 as follows: -
>
> > "It 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. In analysing the evidence at this stage, I am not expected to give a detailed analysis and arrive at a firm finding on the guilt of the Accused. I agree with the caution in *Republic v Robert Zippor Nzilu* (2020) eKLR, where Odunga J (as he then was) stated that:-

> " That there is a danger in making definitive findings at this stage, especially where the Court finds that there is a case to answer is not farfetched and the reasons for not doing so are obvious. As was appreciated by Trevelyan and Chesoni, JJ in Festo Wandera Mukando v The Republic (1980) KLR 103:
>
> > "we once more draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgement. Where a submission of "no case" is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when

reasons should be given; for then that is the end to the case or the count or counts concerned."

6. A similar view was adopted by the Court of Appeal decision in *Anthony Njue Njeru v Republic* (2006) eKLR where it was held that:

> " Taking into account the evidence on record, what the learned Judge said in his ruling on no case to answer, the meaning of a prima facie case as stated in Bhatt's case..., we are of the view that the appellant should not have been called upon to defend himself as all the evidence was on record. It seems as if the appellant was required to fill in the gaps in the Prosecution evidence. We wish to point out here that it is undesirable to give a reasoned ruling at the close of the Prosecution case, as the learned Judge did here, unless the Court concerned is acquitting the accused."

7. I have carefully considered the evidence before me and the prosecution's written submissions dated October 18, 2022 and I am satisfied that the Prosecution has established a *prima facie* case against the accused.

8. Accordingly, I will refrain from delving further in this matter.

9. It is my finding that the accused has a case to answer. He is called upon to elect the mode of his defence in accordance to section 306 of the *Criminal Procedure Code*.

RULING DELIVERED, DATED AND SIGNED THIS 23RD DAY OF NOVEMBER, 2022

.....

R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Mr Waweru holding brief for Mr Njeru for the State, Mr Kenduiwo for the Accused and Kiprotich (Court Assistant)