

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL CASE NO. 63 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

TONY KIPCHUMBA.....ACCUSED

RULING

[1] **Tony Kipchumba**, the accused herein, was arraigned before the Court herein in respect of the Information filed by the Director of Public Prosecutions that he had committed the offence of murder, thereby contravening the provisions of **Section 203** as read with **Section 204** of the **Penal Code, Chapter 63** of the **Laws of Kenya**. The particulars were that on the 28th day of June 2013 at Bonjoge Location within Nandi county, he murdered **Paul Koros**. The accused person denied that Charge and the Prosecution called evidence from 13 witnesses in proof of the allegations.

[2] Pursuant to **Section 306(1)** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya**, it is imperative that, at the close of the Prosecution Case, a determination be made as to whether a *prima facie* case has been made out against the accused person to require him to answer. The rationale for this was aptly expressed in **Ramanlal Trambaklal Bhatt -Vs- Republic [1957] EA 332** thus:

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 final 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.”

[3] Accordingly, I have given careful consideration to the evidence on record, along with the written submissions filed by counsel for the State, with a view of ascertaining whether it is evidence upon which the Court would be prepared to convict if no explanation is offered by the accused person. There is credible evidence that the deceased herein left his home at about 9.00 a.m. in the morning. His intention, according to his widow (**PW1**), was to buy some building materials. Evidence was adduced by the Prosecution to show that in the course of the day, he partook of alcohol and found himself at the home of **Leah Chelimo (PW7)** in a drunken state; and that, as it was raining, he only got to leave for his home after 6.00 p.m. **PW1** testified that the deceased had not returned home by 8.00 p.m. when she retired to bed. She assumed that he had gone to the home of his second wife, **Margaret Koros**. At about 9.00 p.m., she was to learn with shock that the deceased’s body was found lying next to the road leading to his home.

[4] Although the Postmortem Report was not produced, the death of the deceased is not in dispute. It is also not in dispute that the deceased suffered serious injuries on the head and neck. Also indubitable is the fact that the deceased was in general good health before his demise. Credible evidence was adduced herein by the Prosecution to demonstrate that the accused was the last person to be seen with the deceased. Thus, he was not only placed at the scene of crime, but it was also proved that he had in his possession two mobile phones belonging to the deceased.

[4] In the light of the foregoing, I am satisfied that there is *prima facie* evidence connecting the accused with the murder of the deceased. He is accordingly hereby placed on his defence to answer the Charge of Murder pursuant to **Section 306(2)** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya**.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 24TH DAY OF MARCH, 2021

OLGA SEWE

JUDGE