



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL CASE NO. 44 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

RICHARD RUTTO KIPKOSIR.....ACCUSED

RULING

[1] The accused person herein, **Richard Rutto Kipkosir**, was arraigned before the Court on allegations that he had murdered his wife, **Perisi Jemaiyo Chebet** on the night of **9 June 2018**. The offence was alleged to have occurred at Kapkonder Village in Tuturing Sublocation in Kipkaner Location of Marakwet East Sub-County within Elgeyo Marakwet County. He denied the allegation and the Prosecution called evidence from 6 witnesses who included the mother of the deceased, **Tula Chelang'a (PW1)**.

[2] The contention of the Prosecution was that the accused had had a disagreement with the deceased, as a result of which she went to her parents' home. That the accused was unhappy and had gone to plead with her to return to her matrimonial home; all in vain. It was the evidence of **PW1** that, on the night of **9 June 2018**, as they were asleep, the accused stealthily entered the house and stabbed the deceased to death. The occurrence was reported to the police and investigations led to the arrest and arraignment of the accused on a charge of murder. This was after postmortem was conducted on the deceased's body by **Dr. Wilfred Kimosop (PW5)** at Kapsowar Hospital. **PW5** formed the opinion, from the injuries he noted on the body of the deceased, that the cause of her death was hypovolemia due to severe haemorrhage. He produced the Postmortem Form that he filled and signed as **the Prosecution's Exhibit 1** herein.

[3] At the close of the Prosecution Case, **Ms. Gona**, counsel for the defence, filed written submissions urging the Court to acquit the accused person at this stage on the ground that no *prima facie* case has been made out against him by the Prosecution. According to her, no direct evidence was availed before the Court to link the accused with the alleged crime. She further submitted that, the only eye witness, **PW1**, gave evidence that contradicted her witness statement in material particulars. For instance, counsel pointed out that whereas in her testimony before the Court **PW1** stated that she saw the accused stab the deceased, in her statement to the Police, she had stated that she only heard the deceased say that she had been killed and saw the accused running away. Ms. Gona further submitted that the accused stabbed the deceased in self defence after a joint attack by the deceased and **PW1**.

[4] In **Ramanlal Trambaklal Bhatt -Vs- Republic [1957] EA 332** it was held 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.”

[5] There is credible evidence that the deceased died of severe haemorrhage as a result of stab wounds that were inflicted on her on the night of **9 June 2018**; and therefore that her death was attributable to the unlawful acts of her assailant. Additionally, there is on record the evidence of **PW1** that placed the accused at the scene of crime at the time of the occurrence. Needless to say that, at this point in the proceedings, the Court need not give reasons for its conclusions. Suffice it to state, therefore, that I am therefore satisfied that the Prosecution has made out a *prima facie* case against the accused to warrant his being placed on his defence.

[6] Accordingly, the accused is hereby placed on his defence to answer the charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**, pursuant to **Section 306(2)** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya** to answer the charge of murder.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 19TH DAY OF MAY, 2021

OLGA SEWE

JUDGE