



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL CASE NO. E008 OF 2020[MURDER]

CORAM: HON. R.E. ABURILL J

STATE.....PROSECUTION

VERSUS

THOMAS OWUOR OLUOCH.....ACCUSED

RULING ON CASE TO ANSWER

1. The Accused person herein Thomas Owuor Oluoch was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. Particulars of the Information dated 26th November 2020 are that on the 26th day of October, 2020 at around 1700 hours at Tingare Village, Uloma sub location in Ugunja Sub County within Siaya County, he murdered Charles Oloo Oyienga.
3. The accused person pleaded Not guilty to the charge on 2/12/2020 and a Plea of Not guilty was entered in his favour.
4. The prosecution called 9 witnesses who testified and closed its case on 13/10/2021. No submissions on no case to answer were filed despite the court according the defence an opportunity to file the same within seven days.
5. The question before this court for determination is whether the prosecution have established a *prima facie* case against the accused person to warrant him being placed on his defence.
6. The burden of proof lies with the Prosecution throughout the trial and that burden does not shift. The prosecution carries the burden or onus to prove the guilty of the accused person beyond reasonable doubt. However, at this stage, they are not expected to establish the guilt of the accused person beyond reasonable doubt. What is expected of the Prosecution is to establish a prima facie case against the accused person. A prima facie case is not necessarily one that must succeed.
7. **Section 306 of the Criminal Procedure Code** requires the court, after closure of the prosecution case, to make a considered determination on whether an accused person has a case to answer. The section provides:

“36(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 on his own behalf or make unsworn statement and to call witnesses in his defence.....”

8. On what constitutes a prima facie case, in **Bhatt v R [1957] EA 332** the Court of Appeal held:

“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 on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near to 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.”

9. I have considered the evidence adduced by all the nine prosecution witnesses. In my view, and without delving deep into the merits of the said evidence as that would prejudice the defence, I am satisfied that the Prosecution have established a prima facie case against the accused person to warrant him being placed on his defence to answer to the charge of Murder contrary to section 203 as read with section 204 of the Penal Code.

10. Accordingly, the accused person Thomas Owuor Oluoch is hereby found with a case to answer and is placed on his defence. The provisions of Article 50(2)(i)(k) and (l) of the Constitution and Section 306(2) of the Criminal Procedure Code on the rights of the accused person are hereby explained to the accused person in Kiswahili language.

11. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 25TH DAY OF OCTOBER, 2021

R.E. ABURILI

JUDGE