



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL (MURDER) CASE NO.52 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

ROBERT MWANGANGI KIOKO.....ACCUSED

RULING

1. The Accused person, **ROBERT MWANGANGI KIOKO** was charged with the offence of murder contrary to sections 203 as read with section and 204 of the Penal Code Act, Cap 63. It is alleged that on the 30th Day of May, 2015, at Kyawango location in Mwala Sub-county within Machakos County murdered **KATA MUASA**. The Accused denied committing the offence.

2. The accused was represented by Muthama Advocate whilst the State was represented by Mr Machogu.

3. The Prosecution in order to sustain a conviction must prove all the ingredients of the offence of murder. The elements of the offence as provided for under section 203 as read with section 204 of the Penal Code are:-

i. That the deceased is dead;

ii. That the death was caused unlawfully;

iii. That there was malice aforethought; and

iv. That the Accused person directly or indirectly participated in the commission of the alleged offence.

4. The prosecution called a total of seven (7) witnesses in an attempt to prove its case. **Pw1 was Mutanya Muasa** who testified that on 30.5.2015 the deceased was being pursued by the accused who later floored him. He told the court that he saw blood oozing from the upper part of the deceased's chest and that he saw the assault weapon.

5. **Pw2 was Mutune Kivundu** who testified that on 30.5.2015 he heard screams and on inquiry, he found the deceased lying down on the ground bleeding profusely.

6. **Pw3 was Francis Sikuku Maundu** who testified that on 30.5.2015 he received a report that the accused and the deceased were fighting and he rushed to the scene where he found the deceased lying on the ground and that there was a knife beside his body.

7. **Pw4 was Kyalo Mwaya** who testified that on 30.5.2015 he received a call that the deceased had been killed and that he was needed to search for the killer.

8. **PW5 was Pc Dan Onyango Ndura** who testified that on 30.5.2015 he accompanied the OCS to a scene where he found the deceased lying down and found a pen knife near the body. He testified that blood of the deceased and the accused was collected and handed over to the government chemist and that on 4.6.2015 he attended a post mortem examination of the deceased.

9. **Pw6 was Dr Waithera Githendu** who testified of the post mortem examination carried out on the deceased on 4.6.2015. The body had a stab wound on the left chest and there was excessive bleeding; the stab wound extended to the left lung; the spleen had shrunk due to excessive bleeding and she formed an opinion that the cause of death was chest injury secondary to stab wound.

10. **Pw7 was Elizabeth Waithera Syengo** who testified that she had been requested to analyse some items that were brought on 23.6.2015 that were blood samples of the accused, the deceased, a knife and a black t-shirt. She found that the bloodstains on the knife, the t-shirt matched the profile of the deceased.

11. Thereafter the prosecution closed its case and parties were directed to file submissions. It is only the accused's submissions that are on record. Learned counsel submitted that there are inconsistencies in the prosecution evidence and hence urged the court to find so in line with S 206(a) of the Penal Code Act. Counsel urged the court to find that no prima facie case had been established against the accused.

12. It is trite law that prior to placing an accused person to his/her defence, the prosecution is required to have established a *prima facie* case against such accused person. It is now a well-established law that a *prima facie* case is established when the evidence adduced is such that a reasonable tribunal, properly directing its mind on the law and evidence would convict the Accused person, if no evidence or explanation was set up by the Defence. *See Ramanlal .T. Bhatt vs. R [1957]E.A 332*, where the East African Court of Appeal held that a *prima facie* case could not be established by a mere *scintilla* of evidence or by any amount of worthless, discredited prosecution evidence.

13. Also, in the case of *State v. Rajhnath Ramdhan, Amoy Chin Shue, Sunil Ramdhan and Rabindranath Dhanpaul. H.C.A No. S. 104/1997*, J.P. Moosali while quoting Lord Parker C.J.in *Sanjit Chaittal v The State (1985). 39. WLR. 925* stated that:

“A submission that there is no case to answer may properly be made and upheld: (a) when there has been no evidence adduced by the Prosecution to prove an essential element in the alleged Offence; b) when the evidence adduced by the Prosecution has been so discredited that no reasonable tribunal could safely convict on it...”

14. I have carefully evaluated the prosecution evidence. I find that, in the absence of any explanation to the contrary from the defence, the prosecution evidence does establish the three (3) ingredients of the offence of murder. It is not in dispute that there was death and the cause was established. On the question of the accused's participation, this court finds that, in the absence of any evidence to the contrary, the evidence of Pw1 does establish participation of the accused person. In arriving at the above conclusions, I do recognize that at this stage, the standard of proof is not proof beyond reasonable doubt as required for a fully-fledged criminal trial. Rather, what is essential is such evidence which if taken literally or on the face of it would establish the essential ingredients of the offence of murder, as well as the accused's participation therein. It came out clearly that the accused attacked the deceased who was his brother in the presence of their father (Pw1) who witnessed the incident and raised alarm. The said Pw1 is the key eye witness to the incident. The evidence so far tendered sufficiently establishes a prima facie case against the accused warranting him to make a defence.

15. For those reasons, I find that there is some evidence adduced against the accused person to establish a *prima facie* case against him. The same is sufficient to require him to be put on his own defence for the offence of murder. A prima facie case has been established against the accused to require him to make a defence. I find that he has a case to answer and is now called upon to make a defence in line with section 306(2) of the Criminal Procedure Code.

Orders accordingly.

Dated and delivered at Machakos this 29th day of January,2020.

D. K. Kemei

Judge