

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL CASE NO. 3 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

GEOFFREY KILEIYA LOSOLOI.....ACCUSED

RULING

1. The issue before this court is whether the prosecution has established a *prima facie* against the accused to require him to be put on his defence in terms of section 306 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya.
2. Ms Saika, counsel for the accused has submitted that no *prima facie* has been established against the accused. He should therefore be acquitted. She further submitted that the prosecution failed to prove malice aforethought on the part of the accused. Additionally, she submitted that the investigating officer (Pw 7) left too many loopholes including setting free the main suspect, Alex Moturi. She also submitted that the evidence of Pw 3 and Pw 6 was that it was Alex Moturi, who was last seen with the deceased and not the accused. She cited the case of *May v O'Sullivan [1955] 92 CLR 654* for the guidance of the court. She has for those reasons urged the court to acquit the accused and set him free.
3. Ms Torosi for the prosecution has submitted that a prima facie has been made out to warrant the accused to be put on his defence. Based on the evidence of David Lokol Ewl (Pw 2) and Leah Namunyak Kashu (Pw 3), she submitted that the deceased was with the accused and Alex Moturi. These were the last persons who were with the deceased. She also submitted that the accused was positively identified by the witnesses.
4. According to the pathologist (Dr. Kibet) the cause of death was due to strangulation. This according to her was an indication that the deceased was murdered.
5. She cited the case of *Ramanlal Trambaklal Bhatt v. R [1957] EA 332*, in which the Court of Appeal defined a prima facie as one in which ***"A reasonable tribunal properly directly its mind to the law and the evidence could convict if no explanation is offered by the defence."***
6. I have directed my mind to the law and the evidence produced by the prosecution. I find that a prima facie case has been made against the accused. He is hereby put on his defence.

Ruling delivered in open court this 9th day of March, 2020 in the presence of Ms. Torosi for the Republic and Ms. Saika for the accused.

J. M. Bwonwonga

Judge

9/3/2020