



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 5 OF 2016

SILAS MUTUMA MARIMI.....1ST ACCUSED

REUBEN MIANO.....2ND ACCUSED

WYCLIFFE WANGILA SIKUKU.....3RD ACCUSED

VERSUS

REPUBLIC.....STATE

RULING ON NO CASE TO ANSWER

1. In *Bhatt –vs- R [1957] EA 332* Sir Newnham Worley defined a *Prima facie* case in criminal cases in the following famous words:

It is true....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.

2. Similarly, in *R -vs- Jagjivan M. Patel and Others 1, TLR, 85*, in another famous restatement of the meaning of *prima facie* case, the Learned Judge phrased it thus:

All the court has to decide at the close of evidence of the charge is whether a case is made out against the accused just sufficiently to require him to make a defence, it may be a strong case or it may be a weak case. The court is not required at this stage to apply, its mind in deciding finally whether the evidence is worthy of credit or whether, if believed, it is weighty enough to prove the case conclusively, beyond reasonable doubt. A ruling that there is a case to answer would be justified, in my opinion, in a border line case where the court, though not satisfied as to conclusiveness of the prosecution evidence, is yet of opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conclusion.

3. So, to paraphrase these authorities, a *prima facie* case is defined in the negative: A *prima facie* case is not established if at the end of the Prosecution case there is no evidence upon which, if the evidence, taken at its highest, is accepted, a reasonable court could convict. (See *R v Galbraith 73 Cr. App. R. 124*).
4. In the present case, the three Accused Persons – Silas Mutuma Marimi; Reuben Miano and Wycliffe Wangila Sikuku – are jointly charged with the offence of murder contrary to section 203 as read together with section 204 of the Penal Code. It is alleged that on the 8th day of July, 2014 at Olenguruone town within Nakuru County, the three Accused Persons jointly murdered Caren Chepkoech Rono Alias Mercy Chepkoech.
5. After considering the evidence of the seven Prosecution witnesses who testified in the case, applying the test of *prima facie* evidence above, it is my finding that the Prosecution has established a *prima facie* case sufficient to warrant the Accused Persons to be placed on their defence.
6. **Consequently, the Court finds that the Accused Persons have a case to answer. The case shall be scheduled for defence hearing.**

7. Orders accordingly.

Dated and delivered at Nairobi this 28th day of May, 2020.

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JOEL NGUGI

JUDGE

NOTE: This judgment was delivered by Video-conference facility pursuant to the various Directives by the Honourable Chief Justice asking Courts to consider use of technology to deliver judgments and rulings where expedient due to the Corona Virus Pandemic. This resulted in Administrative Directives dated 01/04/2020 by the Presiding Judge, Nakuru Law Courts authorizing the delivery of judgment by video-conferencing. This avoided the need for the participants to be in the same Court room for the delivery of the judgment. The Appellant attended by video-conference from Prison while the Prosecutor, Ms. Verne Odero, and the Court Assistant were in attendance by video-conference set up at the Court's Boardroom. Representatives of the media and select members of the public were able to access the proceedings by watching at the Court's Boardroom. Accordingly, the proceedings met the constitutional requirement of public hearing.