REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MURDER CASE NO. 6 OF 2017

REPUBLIC.....PROSECUTOR

– VS –

DAVID GITARI KAROKI..... ACCUSED

RULING

1. The accused David Gitari Karoki is charged with murder contrary to **Section 203 as read with Section 204 of the Penal Code.** It is alleged that on 25/5/2017 at Makuti village in south Ngariama within Kirinyaga county, jointly with others not before court unlawfully murdered Edwin Njuguna Mwangi.

2. The accused person denied the charge. The prosecution embarked on the journey to prove the charge against the accused and called Eight witnesses. The prosecution closed its case.

3. The counsel for the accused proceed to urge the court in the written submissions filed in court on 15/6/20 to find that the prosecution has failed to make out a prima facie case against the accused.

4. On the other hand the prosecution urged the court to find that it has discharged its onerous burden to establish a prima facie case to warrant the court to order that he be put on his defence.

5. I have considered all the evidence adduced. I have also perused the submissions. The issue for determination is whether the prosecution has established a prima facie case to warrant the accused person to be put on his defence.

6. As it has been well submitted by both counsels, the test of a prima facie case has been settled in the case of **Ramanlal T. Bhatt –v- R. 1957 E.A 332** where it was 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 is made out if, at the close of the prosecution 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 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 offered by the defence."***

7. It has been held that the case may be weak or strong but the court is not required at this stage supposed to apply its mind in deciding finally whether the evidence is weighty enough to conclusively prove the case beyond any reasonable doubts. See **R-v- Jagjiwan M. Patel & Others (1) 7 -7- R (R) 85.**

8. The court is required to determine whether based on the evidence there is case made out to require the accused to give his side of the story. This however does not impose a burden on the accused to prove his innocence. The accused has the right throughout the trial to be presumed innocent until proved guilty.It is a matter of giving the accused person a right to be heard before making a final determination of the case. This is the reason why the court is not supposed to give reasons for determination that a prima facie case has been established as it may prejudice the defence. That is why a prima facie case is defined **'inter-alia' as "the establishment of a legally required rebuttable presumption"**. See **Black Law Dictionary.** Bearing this in mind and having considered all the evidence adduced and the submissions I find that a prima facie case has been established to warrant the accused person to be put on his defence.

Dated at Kerugoya this 14th day of August 2020.

L. W. GITARI

JUDGE