



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**CRIMINAL CASE NO. 11 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ABDIHARAM BARISSA.....ACCUSED**

**RULING**

1. This case has been pending since 2014. For a long time the prosecution and the defence asked the court to grant adjournments to facilitate plea bargain. Ultimately, the Principal Prosecuting Counsel Mr. Okemwa informed the court that though the father of the victim signed the written agreement, the mother declined to do so. The prosecution thereafter on 29<sup>th</sup> November 2018 closed their case and asked court to decide whether a prima facie case has been established for the accused to be put on his defence.

2. In the case of **Ramanlal Bhatt vs R [1957] EA 332 at 334** the East African Court of Appeal stated:

**“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.”**

3. The above reasoning has been applied by courts consistently, and I only need to cite the later Court of Appeal decision in **Anthony Njue Njeru vs Republic – Nairobi Criminal Appeal No. 77 of 2006 [2006] eKLR** where the same reasoning was applied.

4. In short, a prima facie case is one where considering the evidence on record, and if the accused does not say anything in response, a reasonable court might convict.

5. By the time the prosecution closed its case, no postmortem report signed by a medical officer had been produced in court as an exhibit. I appreciate however that it is not mandatory that death be confirmed through production of a medical postmortem report. Each case has to be considered on its own facts and circumstances.

6. With the prosecution evidence herein on record, I find that the prosecution has established a prima facie case against the accused person. I thus put the accused person on his defence and proceed to explain to him the three options available to him under section 211 of the Criminal Procedure Code.

**Dated and delivered at Garissa this 28<sup>th</sup> day of February, 2019.**

.....

**George Dulu**

**JUDGE**