



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**CRIMINAL CASE NO. 46 OF 2013**

**REPULIC.....PROSECUTOR**

**VERSUS**

**CYRUS NYAMWEYA ONDABU.....ACCUSED**

**RULING**

[1] This is a case in which the Accused person, **Cyrus Nyamweya Ondabu**, was charged, on the **8 May 2013**, with the offence of Murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. It was alleged that on the **19 February 2013** at Langas Estate in Wareng District within Rift Valley Province, he murdered **Alice Mogire**; a charge which he denied. The Prosecution called four witnesses in proof of the Charge and at the close of the Prosecution Case, the issue to determine is whether a *prima facie* case has been established to warrant the placement of the Accused on his defence.

[2] In **Ramanlal Trambaklal Bhatt -Vs- Republic [1957] EA 332** it was held that:

**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, the 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 is true, as Wilson, J., said, 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.”**

[3] Accordingly, I have reviewed the evidence adduced by the four Prosecution witnesses; bearing in mind that at this stage, the court need not be satisfied beyond reasonable doubt as to the guilt or otherwise of the Accused Person. **PW1, Dr. Eunice Temet**, a colleague of **Dr. Cynthia Kibet**, who examined the deceased on **19 February 2013** before her death, testified on her behalf as she was unavailable. He produced the P3 Form that was filled and signed by Dr. Kibet; and that report shows that the deceased had sustained extensive burns on her head and neck and third degree burns on her cheeks and neck, thorax and abdomen as well as the anterior aspect of the chest extending to the lower abdomen. She also had third degree burns on both of her upper limbs up to the fingers as well as on her buttocks and thighs. In the opinion of **Dr. Kibet**, the injuries were caused by fire; and in her assessment the deceased suffered 80% third degree burns, amounting to grievous harm. The P3 Form was produced by **PW1** as the **Prosecution's Exhibit No. 1**.

[4] **Dr. Benson Macharia, PW2**, is a Pathologist based at Moi Teaching and Referral Hospital. He similarly attended Court on behalf of a colleague, **Dr. Francis Ndiangui**, who has since resigned from the Hospital. He told the Court that **Dr. Ndiangui** conducted an autopsy on the body of the deceased herein on **11 March 2013** at the Moi Teaching and Referral Hospital's Funeral Home. **Dr. Ndiangui's** findings were that the deceased had sustained third degree burns on the thighs, abdomen, back, both arms, face and part of the scalp. In his estimation,

the deceased suffered 70% burns with signs of loss of blood. Internally, the only finding was the inflammation of the lungs. Hence, **Dr. Ndiangui's** finding was that the cause of death, which occurred on **4 March 2013**, was anaemia and septicemia due to the burns. The Postmortem Form was produced by **PW2** as **Prosecution's Exhibit 2**.

[5] **PW3, William Okoth Obala**, told that Court that the deceased was one of his tenants at Langas. He stayed in the same tenement with her; and hence, he confirmed that she was residing in the same house with her husband who he identified to be the Accused person, **Cyrus Nyamweya**. Regarding the events of **19 February 2013**, **PW3** testified that at about 4.00 a.m., he heard some noise from the house of the Accused and on going there, he could see smoke billowing from the house and that the deceased was crying out in pain inside the house. Together with other neighbours who responded to the cries, they tried to open the door but could not as it was locked from inside. They resorted to breaking one of the panes to be able to see what was happening. **PW3** told the Court that he saw the Accused holding the deceased on a motorcycle; and that her clothes were aflame. He added that, upon their intervention, the Accused opened the door; whereupon the deceased came out crying saying that the Accused had poured petrol on her and set her ablaze. He escorted both the Accused and the deceased to Langas Police Station with the partly burnt motor cycle.

[6] **PC Samson Chepkulei, PW4**, was the Investigating Officer. He produced the motor cycle as **the Prosecution's Exhibit No. 3**. Thus, from the totality of the evidence adduced herein, there is *prima facie* proof that the deceased died as a result of the burns she received; and that the burns were occasioned by the Accused person. Accordingly, there is a case made out by the Prosecution to require the Accused person to answer. He is accordingly hereby placed on his defence pursuant to **Section 306(2)** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya**.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2019**

**OLGA SEWE**

**JUDGE**