



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO. 37 OF 2013

REPUBLICRESPONDENT

VERSUS

LUCAS GITHUKA GATIBAACCUSED

RULING

1. The accused was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which were that on the 14th day of February, 2013 at Kiganjo Location in Thika District within Kiambu County murdered **LICKSON GATIBA**.

2. He pleaded not guilty and to prove its case against him the prosecution called a total of five (5) witnesses and when denied further adjournment the prosecution closed its case and parties invited to make submissions on whether the prosecution had established a *prima facie* case to enable the court put the accused on his defence.

SUBMISSIONS

3. The prosecution opted not to make any submissions at this stage but relied upon evidence on record. On behalf of the defence it was submitted that the evidence tendered before the court did not establish that the accused intentionally caused the death of the minor as the evidence of **PW1** does not with certainty show how the death occurred.

4. At this stage of the proceedings all that the court has to determine is whether the prosecution has established a *prima facie* case to enable the court place the accused person on his defence. *Prima facie* case has been defined in the case of **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC (1957) EA 332** as follows:-

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot argue that a prima facie 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 could 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 argue 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 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.” (Emphasis added)

5. In the case of **REPUBLIC v JAGJIVAN M. PATEL & Others (1) TLR** as follows:-

“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 borderline 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 conviction.” (Emphasis added)

6. Justice J.B. Ojwang as he then was in the case of **REPUBLIC v SAMUEL KARANJA KIRIA CR. CASE NO.13 OF 2004 NAIROBI [2009] eKLR** had this to say on *prima facie* case:-

“The question at this stage is not whether or not the accused is guilty as charged but whether there is such cogent evidence of his connection with the circumstances in which the killing of the deceased occurred, that the concept of prima facie case dictates as a matter of law that an opportunity be created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled . . .

The Court of Appeal Criminal Appeal No. 77 of 2006, the Court of Appeal expressed that too detailed analysis of evidence, at no case to answer stage is undesirable if the court is going to put the accused onto his defence as too much details in the trial court’s ruling could then compromise the evidentiary quality of the defence to be mounted.” (Emphasis added).

7. With that in mind I have looked at the evidence of **PW1** who put the accused and the deceased together with accused being the last person seen with the deceased alive, **PW3** and **PW5** on the conduct of the accused thereafter and come to conclusion that a *prima facie* case has been established to enable me put the accused on his defence which I hereby do. The accused is therefore advised on his rights under **Section 306** and **307** the **Criminal Procedure Code** while guided by his Constitutional rights under **Article 50 (2)(i)(k)** and **(l)**.

Dated, delivered and signed at Nairobi this 26th day of February, 2019.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Naulikha for the State

Mr. Mathenge for the accused

Accused present

Court assistant: Karwitha