



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**CRIMINAL CASE NO. 70 OF 2013**

**REPULIC.....PROSECUTOR**

**VERSUS**

**MICAH KOSGEI KANDA.....ACCUSED**

**RULING**

[1] The allegation against the Accused person herein, **Micah Kosgei Kanda**, is that on the **2<sup>nd</sup> day of August 2013**, at Endul Sub-location within Elgeyo Marakwet County, he murdered **Charles Kimaiyo Cheptarus**. He was accordingly arraigned before the Court on a charge of Murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. He denied the allegations and in proof thereof, the Prosecution called 6 witnesses herein.

[2] Briefly, the Prosecution case was that, on the **2 August 2013** at about 3.00 p.m., the deceased was at home with his wife and children when the Accused suddenly showed up; and without saying much, he took a jembe from the store and struck the deceased with it on the head in the presence of his wife and children. The deceased fell down and died on the spot. His widow, **Jane Somkwony Charles (PW2)** immediately raised alarm, drawing the attention of the villagers to the tragedy that had struck the family. The occurrence was also communicated to the area Assistant Chief, **Benjamin Rotich Kipkore (PW1)** as well as the Chief of Koibirir Location, **Alfred Lorem (PW3)**; whereupon arrangements were made to remove the body from the scene to facilitate investigations.

[3] The Police were involved and postmortem was thereafter conducted by **Dr. Wilfred Komosop (PW5)** in presence of **Evans Toroitich Kiprop (PW4)**. According to **PW5**, the cause of death of the deceased was severe injury to the head. He filled the Postmortem form which he produced as the **Prosecution's Exhibit No. 1**. The murder weapon was however not produced. The Prosecution Counsel conceded an omission on their part that saw them proceed with the evidence of four of their witnesses, including **PW2**, without having them identify the murder weapon.

[4] Accordingly, at the close of the Prosecution Case, it was the submission of **Ms. Orina**, Learned Counsel for the Accused, that the Prosecution had failed to establish a *prima facie* case; and that failure by the Prosecution to produce the murder weapon was fatal to their case. She urged the Court to acquit the Accused at this stage of the proceedings as no *prima facie* case had been made out to warrant his being put on his defence.

[5] At this stage, the court need not be satisfied beyond reasonable doubt as to the guilt of the Accused Person. It suffices that a *prima facie* case be established. As to what amounts to a prima facie case in a criminal trial, it was held in **Ramanlal Trambaklal Bhatt -Vs- Republic [1957] EA 332** thus:

**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.”**

[6] From the totality of the evidence, it is manifest that the deceased was hit on the head with a jembe, and that he died of those injuries, which fractured his skull and lacerated his brain. He died on the spot. Similarly there is credible evidence connecting the Accused to the crime. I am therefore satisfied that a *prima facie* case has been made out against the Accused to require him to answer. Accordingly, he is hereby placed on his defence pursuant to **Section 306(2)** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya** to answer the aforestated Charge of Murder.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2019**

**OLGA SEWE**

**JUDGE**