

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL MURDER CASE NO. 13 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

LABAN MUCHIRA MURIITHI.....1ST APPELLANT

DANIEL MURIITHI NJIRU.....2ND APPELLANT

RULING

The accused persons were charged with murder contrary to Section 203 as read with **Section 204 of the Penal Code Cap 63 Laws of Kenya**. They denied the charge. The prosecution called 8 witnesses in efforts to prove the charge against them. At the close of the case for the prosecution, submissions were made on whether or not the accused persons have a case to answer.

The issue for determination is whether or not the accused has a case to answer.

The **Criminal Procedure Code Section 306** provides as follows:

(1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence, shall after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit recording a finding of not guilty.

(2) When the evidence of the witnesses for the prosecution has been concluded the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court on his own behalf or make unsworn statement and to call witnesses in his defence.....

A definition as to what amounts to a prima facie case was given in the case of **Bhatt –vs- R [1957] EA 332**. In that case the Court of Appeal expressed itself on this issue:

“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 on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near to 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 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.”

At this stage of the proceedings the standards applicable on whether a prima facie case has been made out is lower than the standard on beyond reasonable doubt which applies at the conclusion of the full trial after the accused person has been heard. The strength of the evidence establishing a prima facie case must be the sort of evidence upon whose strength the Court could convict if the defence says nothing to rebut such evidence.

I have considered the evidence tendered by the prosecution. At this stage the court need not give reasons for the finding that there is a prima facie case. Such reasons would be prejudicial to the accused who has not given his defence and the court has not considered that defence. At this stage the court need only communicate its finding without elaborating the reasons for that finding. I have carefully considered the evidence tendered by the prosecution and based on the holding in **Bhatt –v- R** quoted above, I find that the prosecution has established a prima facie case to warrant them to address the court or give unsworn defence and call witnesses as provided under **Section 306 C.P.C**(supra).

Dated at Kerugoya this 18th day of March 2019.

L. W. GITARI

JUDGE