



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**HIGH COURT CRIMINAL CASE NO. 110 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**STANLEY KAMAU NTUMBI.....ACCUSED**

**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 24<sup>th</sup> day of November, 2014 at Maili Saba in Dandora within Nairobi County murdered **JOHN NJUGUNA KIMEMIA**.

2. In the course of the trial the accused objected to the production of his statement under inquiry and the court proceeded to partly conduct trial within a trial but on 22/11/2018 by an oral application Mr. Okeyo conceded that the police did not conform to the Judge's rule on the taking of confessional statements and therefore withdrew the application and the evidence of **PW11** expunged from the court record.

3. At the close of the prosecution case the prosecution opted to rely upon the evidence on record while on behalf of the defence Mr. Chiuri Advocate submitted that the prosecution failed to establish *actus reus* on the part of the accused as the only eye witness **PW3** confirmed that he did not see the accused stab the deceased. It was submitted that his evidence was contradictory and conflicting for which the case of **NDUNGU KIMANYI v REPUBLIC [1979] KLR 282** was submitted as cited in **REPUBLIC v JORAM WAFULA LUTOMIA & ANOTHER [2014] eKLR**.

4. At this stage of the proceedings the court is only required to determine whether a *prima facie* case has been established as was stated 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. 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).*

6. With the injunction by Justice Ojwang in mind, I have looked at the evidence of **PW3 JOSEPH KINYANJUI WANJIRU** who was with

both the accused and the deceased on the material day as corroborated by that of **PW4 COSMAS KINGOO KITUA** and **PW10 PC JESEE N. WANJALA** the investigating officer and I am satisfied that a *prima facie* case has been established by the prosecution to enable me call upon the accused to offer some explanation placing him on his defence.

7. The accused is therefore advised of his rights and obligations under **Sections 306 and 307** of the **Criminal Procedure Code** and it is so ordered.

**Dated, Signed and Delivered at Nairobi this 26<sup>th</sup> day of June, 2019.**

.....

**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Mr. Naulikha for the State*

*Mr. Chiuri the accused person*

*Accused present*

*Court Assistant: Karwitha*