



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO. 95 OF 2014

REPUBLIC.....RESPONDENT

VERSUS

MARY WANJIRU MUTE.....ACCUSED

RULING

1. The accused **MARY WANJIRU MUTE** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**, with the murder of her husband **PETER MUTE KAHWAI** on 28<sup>th</sup> September 2014 at Kabete area in Dagoretti District Nairobi County.

2. At the close of the prosecution case, Mr. Naulikha for the State relied upon the evidence on record and submitted that based on the circumstances under which the offence was committed, the State had established a *prima facie* case against the accused. On behalf of the defence written submissions were submitted to the effect that the State had failed to establish *prima facie* case that she caused the unlawful death of the deceased through an act or omission with malice aforethought.

3. It was submitted that the prosecution witnesses confirmed that the commotion between the accused and deceased occurred on 27<sup>th</sup> September 2014 at 12.00 noon after he came home drunk and insulted everyone whom he found in the compound. It was submitted that none of the witnesses saw or heard the accused attacking the deceased. It was submitted that none of the prosecution witnesses testified that the accused inflicted the blunt force trauma upon the deceased leading to his death.

4. As stated by this court in **REPUBLIC v ANTONY MWANGI MUCHIRI & 3 OTHERS [2019] EKLR** 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. In this matter there is no dispute that the death of the deceased as per the post-mortem report produced by **PW10 POLYCARP MAGAI** was caused by subdural haematoma and cervical spine injury due to blunt force trauma, the deceased having sustained fracture/dislocation C4 with diffuse bruising of the spinal cord as a result of injuries he sustained in the confines of his home he shared with the deceased who was his intimate partner and in the privacy of the home.

8. I have therefore looked at the evidence of **PW8 GEORGE MUTE KAMAU** who was last with the deceased upto 1.00 p.m. as corroborated by **PW1 DAVID MUTE THIONGO** and the evidence of **PW2 MONICA NJERI NGARACHA** who put the accused and the deceased together as corroborated by **PW3 FRIDA MUMBI MUTE** and **PW6 SAMUEL MBUGUA WACHUKA** and without saying too much on the evidence so as not to prejudice the defence the accused is likely to offer, I am satisfied and hold that with the evidence tendered before me and should the accused opt to exercise her rights under **Article 50 (2)(i) & (l)** of the **Constitution of Kenya 2010** to remain silent and offer no evidence, then the court properly directed may convict her, leading to the logical conclusion that *prima facie* case has been established.

9. The accused is therefore placed on her defence and advised of her rights under **Section 307** of the **Criminal Procedure Code** and it is so ordered.

**Dated, signed and delivered at Nairobi this 20<sup>th</sup> day of June, 2019.**

.....

**J. WAKIAGA**

**JUDGE**

***In the presence of:-***

*Mr. Naulikha for the State*

*Mr. Tuli for Wakaba for the Accused*

*Accused present*

*Court assistant- Karwitha*