



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 6 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

WILSON NJERU JONAH.....ACCUSED

R U L I N G

A. Introduction

1. This is a ruling on whether the accused herein has a case to answer and should consequently be put on his defence.
2. The accused herein is charged with the murder of MICHAEL MUCHANGI KINYUA contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 4th day of March 2012 at Njukiri village location of Embu County, the accused murdered the aforementioned Michael Muchangi Kinyua. He pleaded not-guilty to the charge.
3. The prosecution called five (5) witnesses in support of their case which is summarised herein.

B. Prosecution Case

4. PW3, Patrick Muriithi, a brother to the deceased testified that on the 4/03/2012, whilst at their home washing clothes with the deceased, they were accosted by the accused who proceeded to cut the deceased with a panga at the back of his head. The deceased later succumbed to his injuries. PW2 Dr. Godfrey Njuki Njiru carried out the post-mortem on the deceased and concluded that the deceased death was caused by cardiopulmonary arrest from head injury due to cut wound from a sharp object. The accused was certified fit to stand trial by PW1, Dr. Joseph Thuo.

C. Accused's Submissions

5. It was submitted that there was neither direct nor indirect or circumstantial evidence that connected the accused to the injuries that caused the death of the deceased and further that the ingredients of murder and culpability of the accused had not been proved by the testimony of the prosecution witnesses.
6. It was thus submitted that the accused was not guilty of the offence of murder and should be acquitted under Section 306 (1) of the Criminal Procedure Code.

D. Analysis of the Law

7. I have weighed and evaluated the charge as well as the evidence by the prosecution witnesses to prove the elements of the charge. The issue at stake here is whether at the conclusion of the state case the prosecution has produced sufficient evidence to establish a *prima facie* case?
8. The burden of proof of an accused guilt rests solely on the prosecution throughout the trial save where there are admissions by the accused person. So likewise at the close of the prosecution case under Section 306 (1) of the Criminal Procedure Code the prosecution must satisfy by way of the evidence presented so far that a *prima facie* case exist to warrant the accused person to be called upon to answer.
9. Section 306 (1) and (2) of the Criminal Procedure Code provides inter alia that;

“when the evidence of the prosecution case is concluded the court shall consider the evidence and any arguments made by either the defence or prosecution case to determine whether a case against the accused has been made on the allegations/or charge. If

the court finds that there is no evidence that the accused has committed the offence the court shall record a finding of not guilty and order for a discharge or acquittal.”

10. In the alternative if from the evidence of witnesses for the prosecution the court concludes that there is evidence to support the charge against the accused it shall invite him to tender evidence in his defence. The court is obligated to exercise discretion under Section 306 (1) of the Criminal Procedure Code to determine the evidence of a prima facie case at these half-time submissions of the trial in a criminal case.

11. The legal principles to guide a trial court in making a determination on a prima facie case have clearly been stipulated in both the persuasive authorities and in the Eastern African case of **R.T. Bhatt v Republic EA 332 – 334 & 335**. The legal principles which run through the cases cited revolves around sufficiency of evidence capable of establishing the ingredients of the offence the accused is charge with.

12. Secondly, a mere scintilla of evidence can never be enough nor can any amount of worthless discredited evidence. Thirdly it is evidence adduced by the prosecution such that a reasonable tribunal properly directing its mind would convict the accused in absence of any explanation when called upon to answer or put on his defence.

13. From the evidence placed before me, I am satisfied that the test of a *prima facie* case has been met by the prosecution to warrant the accused person to be called upon to answer.

14. The accused person is hereby called upon to answer the charge as per the steps outlined under **Section 306(2)** as read with **Section 307 of the Criminal Procedure Code**.

15. I find that the accused has a case to answer and is hereby called upon to make his defence.

16. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 26TH DAY OF SEPTEMBER, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Mati for State

Ms. Muriuki for Accused

Accused present