

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO 20 OF 2015

REPUBLIC STATE

VERSUS

MARGARET WAMAITHA KAGUA 1ST ACCUSED

STEPHEN RUGUMI WAMBUI SUBJECT

RULING

1. The Accused Person and the Subject are charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on the 27th day of March, 2015 at Ruiru village, Solai Division in Rongai Sub County, within Nakuru County jointly with others not before the Court, it is alleged that the Accused Person and the Subject jointly murdered Simon Nyoike (Deceased).
2. The Prosecution called nine witnesses in a bid to prove its case. The narrative is that the Accused Person and the subject murdered the Deceased in the Accused Person's house and dragged it to the shamba.
3. The Court's singular task at this point in the proceedings is to make a determination whether the Accused Persons should be put on their defence. The test to be used at this point in the trial is the test for *prima facie* case long ago established in the celebrated case, ***Bhatt –vs- R [1957] EA 332***. It was held in that case that a *prima facie* case is not 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.
4. So, to paraphrase the authorities, a *prima facie* case is defined in the negative: A *prima facie* case is not established if at the end of the Prosecution case there is no evidence upon which, if the evidence, taken at its highest, is accepted, a reasonable court could convict. (See ***R v Galbraith 73 Cr. App. R. 124***).
5. At this point in the case, it would be improper to assess the strength or weakness of the prosecution evidence by taking a view of the witness reliability unless I came to the conclusion that the state of the evidence called by the Prosecution, taken as a whole, is so unsatisfactory, contradictory, or so transparently unreliable that no court, properly directing its mind, could properly convict on the evidence. In my view, this forbiddingly high threshold is not met here, since there is some evidence which, if accepted and "taken at its highest", would entitle the Court to convict. At this point, the less I say, the better.
6. **The upshot is that the Accused Person and the Subject are, consequently, found to have a case to answer and are put on their defence.**
7. Orders accordingly.

Dated and Delivered at Nakuru this 19th day of December, 2019.

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JOEL NGUGI

JUDGE