



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CRIMINAL DIVISION

CRIMINAL CASE NO.51 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

LILIAN AYUMA ATIATO.....1ST ACCUSED

PAMELA ATIENO ODENDE2ND ACCUSED

RULING

1. The accused persons were 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 8th day of May, 2015 at Mbotela Estate in Makadara District within Nairobi County murdered **DAVID KICHUKU KARERI**.

2. They pleaded not guilty and to prove its case against them the prosecution called a total of eight (8) witnesses and at the close of the prosecution case it was submitted by the defence that the prosecution case was full of contradictions and in particular the evidence of PW1 as against that of PW2 and PW3. It was submitted that the said contradictions went to the very root of the cause and in support thereof the case of **REPUBLIC v MOUREEN ATIENO ODUOR High Court of Kenya at Kisumu Cr. Case No. 38 of 2014** was submitted.

3. The prosecution opted not to make any submissions but to rely upon the evidence on record.

4. At this stage all that the court is required to do is make a finding whether there is evidence tendered upon which a reasonable tribunal directing its mind can convict the accused person should they opt to offer no explanation as was stated in the case of **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC (1957) EA 332 at pg 335** 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. I have taken into account the evidence on record and without saying much therein so as not to compromise the defence likely to be advanced by the accused persons and has come to a conclusion that a prima facie case has been established to enable me put the accused persons on their defence which I hereby do. The accused persons are hereby advised on their rights under Section 306 of Criminal Procedure Code.

DATED, DELIVERED and SIGNED at Nairobi this 27th day of February, 2018

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Meroka for the State

Mr. Ndungu for the 1st and 2nd accused

1st and 2nd Accused persons present

Court clerk Tabitha