



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO.51 OF 2012

REPUBLIC

Versus

HASSAN GUYO KAMPICHA alias BONAYA

RULING

No case to answer

[1] Upon close of the prosecution's case, I should now determine whether the prosecution has established a prima facie case against the accused as to be called upon to enter on his defence. See section 306 of the Criminal Procedure Code:-

306. (1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.

(2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.

(3) If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon him to enter upon his defence.

Needless to state that this exercise is not just a mundane ritual; it is an essential part of criminal trial, for it ensures that no one continues to stand trial unless there is a *prima facie* case established against him at the close of the prosecution case. It is founded upon the right to fair trial and gives effect to the presumption of innocence of the accused at all stages of trial.

Prima facie case

[2] What is *prima facie* case? We learnt this in our early stages of university education. But, as I have stated, the subject is as important today as it has always been in criminal justice. *Prima facie* case is said to be:-

“...one which a reasonable tribunal properly directing its mind to the law and the evidence would convict if no explanation is offered by the defence”. See RAMANLAL BHATT vs. R (1957) EA 332(CA)

[3] The accused is facing 8 counts of murder charges. The heinous crimes herein were committed against 9 innocent persons- alas, they lost their lives in that fateful night. In support of their case, the prosecution called a total of six witnesses. I have perused the record and this is what it portends. None of the prosecution witness saw the accused shoot any of the deceased persons. I am aware that PW1 JOHN GITONGA stated that he saw the accused on the fateful morning carrying a bag which belonged to M'Murwabua. But he did not see him shoot anybody. Nonetheless, the manner in which he identified the accused at the police station and in the office of the OCS is wanting. Again, the Investigations Officer one Amos Sergon Tebeny (PW6) admitted that he did not conduct any identification parade. He also stated that the weapons used to commit the murders were never recovered. Ballistic test was also not done of the cartridges. Bur before I close, one

surprising thing is that PW6 stated that amongst those who attended the secret meetings on 5th and 6th June 2012 to plan the revenge mission was a Councilor of Kina, Ali Wario, Chief Jilo Halake of Kina North, Hassan Kurache, a councilor. These persons were not arrested. In addition, despite the crimes in question being heinous and tainted with ethnic hostilities, investigations in this case were not done with due care and thoroughness. That notwithstanding, it is apparent that there is no evidence:-

“...which a reasonable tribunal properly directing its mind to the law and the evidence would convict if no explanation is offered by the defence”. See RAMANLAL BHATT (supra).

In the upshot, I find that the prosecution did not establish a prima facie case on which the accused could be called to mount his defence. I, therefore, record a finding of not guilty pursuant to section 306 (1) of the CPC and accordingly acquit the accused. It is so ordered.

Dated, signed and delivered in open court at Meru this 22nd day of February, 2018.

F. GIKONYO

JUDGE

In the presence of:

Accused – present

Mr.Kinyua advocate for State

Munene advocate for Murithi advocate for accused

F. GIKONYO

JUDGE