



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 58 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

RASTON KIPKORIR KOECH.....ACCUSED

RULING ON A CASE TO ANSWER

1. **RASTON KIPKORIR KOECH alias CHARLES** faces the charge of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. The particulars of the offence are that between the nights of 4th and 5th May 2013 at Mosotik village, Mogor location in Transmara East District within Narok County murdered **PAUL CHERYIUOT KIPKOECH**.
2. The accused pleaded not guilty to the charge and a trial was conducted in which the prosecution presented the evidence of 7 witnesses whose testimonies can be summarized as follows.
3. **PW1 SHADRACK KIPRONO KOECH** the deceased's 18 years old son testified that he was on 5th July 2013 asleep in his house when he learnt that someone had slashed/cut his father, the deceased herein. He stated that he did not know who caused the death of the deceased, but that the accused was his elder brother.
4. **PW2 PAUL KIPKEMOI CHANGTOEK** learnt about the death of the deceased and went to condole with his family. He alleged that the accused confessed to him that he had killed his father. On cross examination, PW2 admitted that the accused's alleged confession was not contained in his statement with the police.
5. **PW3 SHEILA CHEBET CHERUIYOT**, the deceased's sister in law, testified that on the material night, he heard someone knocking at her door but she did not open the door. She alleged that she heard the voice of the accused and heard accused running away at a high speed.
6. PW4 and PW5 learnt about the death of the deceased on the day after he was killed. PW5 and PW6 identified the body of the deceased for purposes of the post mortem examination.
7. **PW7 P.C. MASOND RASHID** investigated the case and preferred the murder charge against the accused
8. The court is at this juncture tasked with establishing whether or not the prosecution has established a prima facie case against the accused so as to warrant his being placed on his defence.
9. In the case of **Ramanlal Trambaklal Bhatt -Vs- Republic (1957) E.A. 332** the court held:

"(i) The onus is on the prosecution to prove its case beyond reasonable doubt and 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.

(ii) The question whether there is a case to answer cannot depend 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."

10. In the instant case, as I have already stated in this ruling, the prosecution tendered the evidence of 7 witnesses.

11. A summary of the evidence of the said witnesses does not show that any of them linked the accused to the murder of the deceased. PW2 claimed that the accused confessed to killing the deceased. The alleged confession did not form part of the witnesses' statement to the police and even though PW2 stated that the confession was made to him in the presence of 4 other witnesses including, a police officer and the area assistant chief, none of the 4 witnesses testified in court to corroborate the testimony of PW2. From the cross examination of PW2, it is clear that the accused denied having made the alleged confession. Under the above circumstances I find that there was no proper confession before the court.

12. In the case of **Parvin Singh Dhalay vs Republic CR. APP No. 10 of 1887** the court held:

"But a confession to criminality remains a confession whether it be made to a person in authority or to a private person and once the confession is repudiated or retracted or both repudiated or retracted, the confession requires corroborating unless the court is, for cogent and solid reasons satisfied that the confession, though not corroborated, cannot be but true."

13. In the instant case, nothing could have been easier than for the prosecution to avail the evidence of any of the witnesses PW2 claimed were with him at the time the alleged confession was made so as to confirm his testimony on the same.

14. As I have already found in this ruling, there was no direct evidence linking the accused to the murder. The prosecution's case was anchored on speculation that the accused was the culprit going by the claims that there was bad blood between him and the deceased. My take is that the existence of bad blood between two people does not in itself connote involvement in the murder of a rival as there must be direct and cogent evidence linking the accused to the death of the deceased.

15. I am therefore not satisfied, from the summary of the evidence presented by the prosecution, that it meets the test of a prima facie case that would warrant an order placing the accused on his defence. In the circumstances, I find that placing the accused on his defence would not serve any useful purpose and consequently, I acquit the accused under section 306 (1) of the Criminal Procedure Code and direct that he shall be set free forthwith unless he is otherwise lawfully held.

Delivered, dated and signed in at Kisii on 19th of March 2018.

W.A. OKWANY

JUDGE

In the presence of:

- Mr. Otieno for the State

- Mr. Okenye for the Accused

- Omwoyo court clerk