



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO. 104 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

EVERLYNE WANZA KILUNGYA.....ACCUSED

RULING

1. The accused **EVERLYNE WANZA KILUNGYA** was 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 the 30th day of October, 2015 at Kwa-Reuben Slums Industrial Area Makadara Sub-county within Nairobi County murdered **JOHN ONCHIRI OGAAO**.

2. She pleaded not guilty and to prove its case against her the prosecution called a total of ten (10) witnesses. At the close of the prosecution case it was submitted that the prosecution had through evidence placed the accused at the scene to the exclusion of any other person committing the crime.

3. On behalf of the accused it was submitted that the evidence adduced by **PW2** and **PW5** was not sufficient as required by the standard of proof beyond reasonable doubt to put the accused on his defence. It was submitted further that the evidence tendered did not establish ingredients of murder and therefore failed to prove a *prima facie* case to enable the court call upon the accused to defend herself and should therefore under **Section 306 (1) of Criminal Procedure Code** record a finding of not guilty.

4. At this stage of the proceedings, under **Section 306** of the **Criminal Procedure Code** all that the court is required to do is to find whether a *prima facie* case has been established to enable the court put the accused on his defence as was stated in the case of **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC (1957) EA 332 at pg 334** thus:-

“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. From the evidence tendered before court in particular the evidence of **PW2** who was with both the accused and the deceased and **PW5** who also placed the accused and the deceased together and the evidence of **PW9 SGT. CAROLINE MUTISO** who re-arrested the accused and without saying much on the said evidence at his stage, find and hold that a *prima facie* case has been established to enable me put the accused on her defence which I hereby do.

6. The accused is therefore advised of her rights under **Section 306** of the **Criminal Procedure Code**.

DATED, SIGNED and DELIVERED at Nairobi this 30th day of April, 2018

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J. WAKIAGA

JUDGE

In the presence of:-

Miss Wagulu for the State

Mr. Njuguna for the Accused

Accused present

Court Assistant - Paul