



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO. 27 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

BONIFACE KABUCHO KURIA.....ACCUSED

RULING

1. The accused 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 night of 22nd December 2014 at New Donholm Estate within Nairobi County murdered **WILLY MWONGERI MBUGUA**.

2. He pleaded not guilty to the said charges and to prove its case the prosecution called a total of thirteen (13) witnesses and at the close of the prosecution case it was submitted by the prosecution that the subscribed defaults of the accused showed that on the material day he was at the Donholm area having left the City Centre through Mombasa road and that he was in constant communication with the deceased and was actually the last person to had communicated with the deceased as per the call logs thereby linking him to the death of the deceased. It was submitted that the motive for the killing was established as being the sum of Kshs.380,000/= which the deceased obtained from his mother for the purposes of buying a DJ Mixer. It was submitted that a *prima facie* case had been established.

3. On behalf of the accused it was submitted that the fact of the accused and the deceased being good friends was confirmed by **PW4**, **PW1** and **PW3** and it was submitted that the accused co-operated fully with the police and did not resist arrest or go into hiding after the commission of the offence. None of the items allegedly stolen from the crime scene were not recovered from the accused who bore no scars or marks attributed to a struggle which definitely ensued at the scene. It was submitted that no attempt was made by the investigators to strike out any chance of that the deceased may have interacted with unknown third parties elsewhere and therefore no *prima facie* case was proved against the accused to warrant him being put on his defence.

4. At this stage, the issue is not whether or not the prosecution has established a case against the accused person beyond reasonable doubt but whether a case has been made to justify calling upon the accused person to offer an explanation as was stated in the case of **REPUBLIC v JAGJIVAN M. PATEL & Others (1) TLR** as follows:-

“All the court has to decide at the close of evidence of the charge is whether a case is made out against the accused just sufficiently to require him to make a defence, it may be a strong case or it may be a weak case. The court is not required at this stage to apply its mind in deciding finally whether the evidence is worthy of credit or whether, if believed, it is weighty enough to prove the case conclusively, beyond reasonable doubt. A ruling that there is a case to answer would be justified, in my opinion, in a borderline case where the court, though not satisfied as to conclusiveness of the prosecution evidence, is yet of opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conviction.”

(Emphasis added)

5. In the case of **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC (1957) EA 332** the East African Court of Appeal had this to say:-

“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)

6. Justice J.B. Ojwang as he then was in the case of **REPUBLIC v SAMUEL KARANJA KIRIA CR. CASE NO.13 OF 2004 NAIROBI [2009] eKLR** had this to say on *prima facie* case:-

“The question at this stage is not whether or not the accused is guilty as charged but whether there is such cogent evidence of his connection with the circumstances in which the killing of the deceased occurred, that the concept of prima facie case dictates as a matter of law that an opportunity be created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled . . .

The Court of Appeal Criminal Appeal No. 77 of 2006, the Court of Appeal expressed that too detailed analysis of evidence, at no case to answer stage is undesirable if the court is going to put the accused onto his defence as too much details in the trial court’s ruling could then compromise the evidentiary quality of the defence to be mounted.”

(Emphasis added).

7. A detailed analysis of the evidence is not advisable at this stage should the court decide to put the accused on his defence as that is likely to compromise the defence the accused is likely to offer.

8. With this in mind I have looked at the evidence tendered before court and in particular the call data which placed the accused within the location of the crime scene and the previous communication between him and the deceased including their intention to start a business together for which the deceased obtained money from his mother and is satisfied that the prosecution has made out a *prima facie* case to enable the court place the accused on his defence which I hereby do so that if the same so wishes may state his side of the story.

9. The accused is advised of his rights under **Section 306** of the **Criminal Procedure Code**.

DATED, SIGNED and DELIVERED at Nairobi this 19th day of June, 2018.

.....

J. WAKIAGA

JUDGE

In the presence of:-

Miss Wegulu for the State

Mr. Maina for the Accused

Accused present

Court Assistant - Karwitha