



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO. 74 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JAMES NGANGA GACHURU.....ACCUSED

RULING

1. The accused **JAMES NGANGA GACHURU** 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 29th day of July 2014 at Kamulu Market in Ruai Division, Njiru sub-county within Nairobi County murdered **CHARLES NJOROGE**.

2. He took his plea on 15/8/2014 before Achode J. when a plea of not guilty was entered for him. On 17/9/2014 he appeared before R. Korir J. when through his Advocate on record made an oral application to be released on bond which application was heard before Kimaru J. on 10/12/2014 and by a ruling dated 17/2/2015 was released on bond pending trial.

3. On 9/11/2015 his trial commenced before me and to prove its case the prosecution called a total of thirteen (13) witnesses. At the close of the prosecution case the parties herein filed their written submissions on 30/4/2018 and 29/5/2018 respectively. On behalf of the prosecution it was submitted that the accused was armed and misused the fireman by killing the deceased as supported by witness testimony.

4. On behalf of the defence it was submitted that the prosecution case was riddled with inconsistencies and unexplained contradictions. It was submitted further that the evidence on record exonerated the accused from the charges of murder. It was further submitted that vital witnesses interviewed by **PW6** were never called and therefore an adverse inference should be made that if called their testimony would have been adverse to the prosecution case and in favour of the accused. It was therefore submitted that it would not be proper to put the accused on his defence.

5. 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)

6. 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)

7. 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).

8. With the above in mind I have looked at the evidence tendered and without saying much thereon so as not to prejudice the defence the accused is likely to advance am satisfied that a prima facie case has been made by the prosecution to enable me put the accused on his defence which I hereby do. The accused is therefore advised of his rights under **Section 306** of the **Criminal Procedure Code**.

DATED, SIGNED and DELIVERED at Nairobi this 14th day of June, 2018.

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J. WAKIAGA

JUDGE

In the presence of:-

Ms. Wegulu for Meroka for the State

Mr. Uvyu for Orange for the Accused

Accused present

Court Assistant Karwitha