



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT CRIMINAL CASE NO 99 OF 2014
REPUBLIC.....PROSECUTOR
VERSUS
KENNEDY MUSEE SAMMY.....ACCUSED
RULING

1. The accused **KENNEDY MUSEE SAMMY** is 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 13th October, 2014 at Waruku village Dagoretti District within Nairobi County murdered **ROSE MUKUL**.

2. He pleaded not guilty to the said charges and to prove its case the prosecution called a total of seven (7) witnesses and at the close of the prosecution the accused submitted that there was no direct evidence linking him directly with the killing and that the evidence tendered by the prosecution witnesses was purely circumstantial. It was submitted that there were several that there were several loopholes in the prosecution case which the court cannot fill the gaps for. In support of these submissions the following case were submitted:-

1. **REPUBLIC V JOSEPH NDUNGU KIMATHI HIGH COURT OF KENYA AT NYERI CR. CASE NO. 31 OF 2008**

2. **REPUBLIC V JOSPHAT KIPRUTO BETT HIGH COURT OF KENYA AT ELDORET CRIMINAL CASE NO. 42 OF 2011.**

3. On behalf of the prosecution it was submitted that based upon the evidence of the prosecution witnesses a prima facie case had been made out against the accused to enable the court place him on his defence under the provisions of **Section 306 (1)** of the Criminal Procedure Code as the evidence on record against the accused was overwhelming.

4. At this stage the court is required under **Section 306(1)** of the Criminal Procedure Code to determine whether the accused had a case to answer. What constitute a prima facie case has been stated over and over again 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. With the above in mind I have taken a look at the evidence of PW1, PW4, PW5 and PW6 and is of the considered view and hold that the prosecution has established a prima facie case to enable the court place the accused person on his defence which I hereby do. The accused is therefore advised of his rights under the provision of **Section 306(2) of Criminal Procedure Code.**

DATED, SIGNED and DELIVERED at Nairobi this 21st day of **June, 2017.**

.....

J. WAKIAGA

JUDGE

In the presence of:-

Mrs. Kinoti for the State

Mrs. Gulenywa for the Accused

Accused present

Court clerk – Tabitha