

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL CASE NO. 40 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

DOMINIC WAMBUA VAITAACCUSED

RULING

Dominic Wambua Vaita, the Accused person, is charged with one count of murder contrary to section 203 as read together with section 204 of the Penal Code. The particulars of the charge as stated in the Information from the Director of Public Prosecutions dated 17th December 2012, are that on the 1st December 2012 at Kamuthuo village, Ikalaasa Location in Mwala District within Machakos County the Accused person murdered Francis Nguta Ndambuki (hereinafter referred to as “the deceased person”).

The Accused person pleaded not guilty to the offence and the trial commenced on 29th September 2015. I heard a total of nine prosecution witness. The Defence and Prosecution counsel were subsequently directed to file submissions on case to answer.

Justus M. Mutia Advocate, the learned counsel for the Accused person, filed submissions dated 16th May 2017, wherein he urged this Court to find that no case has been made out against the accused person to warrant his being put on his defence under Section 306 of the Criminal Procedure Code, and that the case against the accused should be dismissed.

It was submitted that the evidence tendered could not support the charge of murder levelled against the Accused person, as it is only PW1 who alleged that there was a fight between the Accused and the deceased and whose evidence was not credible. Further, that PW2 was declared a hostile witness and was therefore of no value to the prosecution case, and PW3, PW4, PW5 found the deceased when he had already died .

In addition, that PW6 presented her analysis on the blood stains found on the clothing of both the deceased and the Accused, and found that the blood group belonging to the Accused was not found on the clothing belonging to the deceased. The evidence of PW6, PW8 and PW9 was also analysed and found not to link the accused person to the crime. Reliance was placed on the decisions in **R.T. Bhatt vs Republic [1957] EA 332- 334 & 335** and **Republic vs Alex Mwanzia Mutangili [2017] eKLR** for the position that the required threshold had not been met.

Ms Rita Rono, the learned prosecution counsel, filed submissions dated 10th July 2017, wherein she summarized the evidence of the nine prosecution witnesses, which she contended placed the accused at the scene if the murder where he was seen committing the offence. Further, that malice aforethought can be inferred from the Accused waiting for the deceased and hitting him with a stick. Lastly, that a postmortem conducted on the deceased established the cause of death. It was submitted that the prosecution had met the threshold set out in **Ramanlal Rambaklal Bhatt v R, (1957) EA 332**

After perusing the original and typed proceedings and submissions made by the prosecution and defence counsel, I am called upon to make a ruling pursuant to section 306 of the Criminal Procedure Code as to whether to find the Accused person not guilty or to put him on his defence. The issue before the Court therefore is whether the evidence brought by the prosecution establishes a *prima facie* case to warrant putting the accused person on his defence.

The threshold for a finding of a *prima facie* case has been set out in several cases among them **Ramanlal Trambaklal Bhatt v R [1957] EA 332**, **Wibiro alias Musa v R [1960] EA 184** and **Anthony Njue Njeru v Republic [2006] eKLR**. The law in this regard is that although a court is not required at this stage to establish that the prosecution has proved its case beyond reasonable doubt, it must nonetheless be satisfied that a reasonable tribunal directing its mind to the law and the evidence could convict if no explanation is offered by the defence.

I have analysed the evidence brought by the prosecution and arguments by the parties in light of the threshold that needs to be met to establish a *prima facie* case of murder. After considering the testimony of the nine prosecution witnesses, I am satisfied that there is sufficient evidence to put the Accused person on his defence as there was evidence adduced of the death of the deceased, and that placed the Accused person at the scene of crime in which it was testified that he had a fight with the deceased. In addition there was evidence of a weapon recovered from the scene of crime. This evidence is sufficient at this stage to establish a *prima facie* case.

The Accused person is now informed of his right to remain silent; to give unsworn statement in which case he shall not be cross-examined; or to give sworn testimony in which case he shall be cross-examined by the prosecution. He may also elect to make an address through their advocate, and is also informed of his right to call witnesses.

Orders accordingly.

DATED AND SIGNED AT MACHAKOS THIS 26th DAY OF JULY 2017.

P. NYAMWEYA

JUDGE