



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CRIMINAL DIVISION
CRIMINAL CASE NO. 3 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JOHN MWANGI CHEGE.....ACCUSED

RULING

1. The accused **JOHN MWANGI CHEGE** was charged with the offence of murder contrary to **Section 203**, as read with **Section 204** of the Penal Code to which he pleaded not guilty.
2. To prove its case against the accused the prosecution called a total of nine (9) witnesses and at the close thereof it was submitted by the prosecution that the accused had been placed at the scene of murder. On behalf of the accused it was submitted that the prosecution had not established a prima facie case to enable the court place the accused on his defence.
3. It was submitted that the prosecution failed to call all the witnesses thereby denying the accused his constitutional right under Article 50(2) (k) of the Constitution – right to fair hearing. It was submitted that the prosecution case was based purely on circumstantial evidence which did not point to the guilt of the accused person.
4. At this stage of the proceedings the law that guides the court is set out in **Section 306** of the Criminal Procedure Code in the following terms:-

“306 (1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considered that there is no evidence that the accused or any one of several accused committed the offence shall after hearing if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit record a finding of not guilty.

306 (2) When the evidence of the witnesses for the prosecution has been concluded, the court if it considered that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each of the accused persons committed the offence, shall inform each of the accused person of his right to address the court, either personally or by his advocate (if any) to give evidence on his behalf, or to make an unsworn statement and to call witnesses in his defence and in all cases shall require him or his advocate (if any) to state whether he intends to call any witnesses as to fact other than the accused person himself and upon being informed thereof, the judge shall record the fact.

306(3) If the accused persons says that he does not intend to give evidence or make an unsworn statement or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person, but if the accused person says that he intends to give evidence or make an unsworn statement or to adduce evidence, the court shall call upon him to enter upon his defence.”

5. The court has to consider whether a prima facie case has been made out which prima facie case was defined in **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC (1957) EA 332 at pg 334** as follows:-

“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. This legal position must be weighed against Justice Ojwang’s (as he then was) decision in **REPUBLIC v SAMWEL KARANJA KURIA CRIMINAL CASE NO. 130 OF 2004 Nairobi (2009) eKLR** in the following terms:-

“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”.....

In the Court of Appeal Criminal Appeal No. 77 of 2006 the Court of Appeal expressed that too detailed analysis of the 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.”

7. Whereas the prosecution case as submitted by the defence is based purely upon circumstantial evidence, I am satisfied and hold that the prosecution has met the legal threshold of prima facie case to enable the court place the accused on his defence which I hereby do. The accused is therefore advised of his rights under Section 306 (2) and 307 of the Criminal Procedure Code.

DATED, DELIVERED and SIGNED at Nairobi this 19th day of October, 2017.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Meroka for the State

No appearance by Mr. Wakaba for the accused

Accused present

Court clerk Tabitha