



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MACHAKOS**

**CRIMINAL CASE NO. 2 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**MARY MUENI MUASYA.....ACCUSED**

**RULING**

Mary Mueni Muasya, the Accused person, was 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 7<sup>th</sup> January 2014 are that on the night of 20<sup>th</sup> and 21<sup>st</sup> December 2013 at Yumabani village, Kakuswi sub-location, Kiteta Location in Mbooni East District within Makueni County , the Accused Person murdered Joseph Muasya Musumbi (hereinafter referred to as “the deceased person”).

The Accused persons pleaded not guilty to the offence on 11<sup>th</sup> February 2014, and the trial commenced before Mutende J. on 2<sup>nd</sup> June 2015, when the learned Judge heard one prosecution witness. The learned judge was subsequently transferred, and I took over the conduct of the trial on 29<sup>th</sup> September 2015 after complying with the provisions of section 200 of the Criminal Procedure Code , and heard ten prosecution witnesses. The Defence and Prosecution counsel were then directed to file submissions on case to answer after the Prosecution closed its case.

B.M. Mungata & Company Advocates, the learned counsel for the 1st and 2nd Accused persons filed submissions dated 20<sup>th</sup> June 2017, wherein they relied on the definition of a *prima facie* case as 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 as held in the case of **Republic v Abdi Ibrahim Owl, (2013) e KLR**. It was urged that the that the prosecution had not established a *prima facie* case for the following reasons:-

1. There was no eye witness to the alleged offence.
2. There was no link established between the death of the deceased and the accused persons.
3. There is no circumstantial evidence pointing the accused to the commission of the offence.
4. The ingredients of the offence have not been proved .
5. No photographs of the scene were produced.
6. There were inconsistencies in the prosecution case.

Ms Rita Rono, the learned prosecution counsel, filed submissions dated 16<sup>th</sup> October 2017 wherein the evidence by the prosecution was summarized, and it was contended that the Prosecution had met the threshold set out in **Ramanlal Rambaklal Bhatt v R, (1957) EA 332** for reasons that the evidence placed the accused person at the scene of the killing, and that she was the last person to be seen with the deceased on the night that he died. Further, that the fact of death was established and was not challenged by the accused person, and that the postmortem conducted on 2<sup>th</sup> December, 2013 revealed that the deceased died as a result of severe head injuries and exsanguination due to the multiple cuts.

Therefore, that the prosecution has discharged its burden in establishing a *prima facie* case against the accused to warrant the accused to be put on her defence.

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 persons not guilty or to put them on their 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 persons on their 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. Joseph Musumbi Muasya (PW1) and Margaret Kathesya Musumbi (PW2) who were the father and mother of the deceased respectively, testified as to finding the body of the deceased in his house on 21st December 2013. Sergeant Robert Onkware (PW5) and PC Koome (PW 10) also testified as to seeing the deceased's body at the scene of the crime.

Jackson Maeke Musumbi (PW3) who was the deceased's brother testified as to identifying the deceased's body during the postmortem, while Doctor Pius Mutuku (PW8) who carried the postmortem on the deceased testified that the cause of death was severe head injuries and severe loss of blood due to the multiple cuts. Lastly, Musyoki Mwasya (PW6), who was a minor son of the deceased, placed the Accused person, who was the wife of the deceased, at the scene of the offence, which was the deceased's house. He also testified as to the home environment before the deceased's death. After considering the testimony of these witnesses, I am satisfied that there is sufficient evidence to put the Accused Person on her defence.

The Accused Person is thus informed of her right to remain silent, to give unsworn statement in which case she shall not be cross-examined, or to give sworn testimony in which case she shall be cross-examined by the prosecution. The Accused Person may also elect to make an address through her advocate, and is also informed of her right to call witnesses.

Orders accordingly.

**DATED AND SIGNED AT MACHAKOS THIS 20<sup>th</sup> DAY OF DECEMBER 2017.**

**P. NYAMWEYA**

**JUDGE**