



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL CASE NO. 20 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

ANTONY MBAGO RUMUSU.....1ST ACCUSED

HARRISON MAINA KAMAU.....2ND ACCUSED

RULING

Antony Mbago Rumusu, the 1st accused, and Harrison Maina Kamau, the 2nd accused, are charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence state that on the night of 11th and 12th of January 2013 at Umoja 1 Estate in Nairobi County, within Nairobi Province (*sic*) jointly with others not before the court murdered Nicholas Vaati Ndavi, the deceased.

The prosecution has called evidence from five witnesses to support its case. At the close of the prosecution case this court is under a duty at this stage of the trial to determine whether the evidence of the five witnesses establishes a prima facie case against the two accused persons or any of them to persuade this court to put them on their defence. This ruling is in respect to that determination.

The Court in **Ramanlal Trambaklal Bhatt v. Republic (1957) E.A. 332** has defined “prima facie” case to mean as follows:

“It is may not be easy to define what is meant by a “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.”

In **R. v. Jagjivan M. Patel & Others 1, TLR, 85** the learned Judge said;

"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 border line 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.”

With these authorities in mind I have examined the evidence of Paul Maingi Mutilu, PW1; Nicholas Wambua Kamba, PW2 and Nicholas Ndavi, PW3. The three witnesses were with the deceased on the night he met his death. They testified that they joined the deceased at Doc's Pub Bururburu in Nairobi and took alcoholic drinks until past midnight. They testified that an altercation arose outside the Pub after the two accused persons, who used to wash cars at the parking of Doc's Pub, demanded to be paid for washing Motor Vehicle No. KBN 610A belonging to the deceased. After the deceased refused to pay them evidence shows that the deceased decided to walk home shortly thereafter after a disagreement with PW1 his driver. The deceased lived at Umoja 1 Estate which is situated across Outer Ring Road. The two accused are said to have followed him while the three witnesses drove the same motor vehicle towards deceased's home. The deceased did not arrive home. He was killed on the way. The cause of death has been established as severe head injury that caused a fracture of the skull.

I have considered that the two accused persons are implicated in evidence as having argued with the deceased over payment of money for allegedly washing his vehicle KBN 610A and having followed the deceased. The evidence places them at Doc's Pub where they met the deceased and the three prosecution witnesses. I am satisfied that a prima facie case has been established in line with the **Patel case** above and I do hereby find that each of the two accused persons has a case to answer. I do hereby inform them of their rights under section 306 (2) of the Criminal Procedure Code that they are required to inform this court whether they will give a sworn or unsworn statement in their respective defences and whether they will be calling witnesses in their defence. It is so ordered.

Dated, signed and delivered this 21st day of April 2016.

S. N. MUTUKU

JUDGE

In the presence of:

Ms Macharia for the prosecution

Mr. Mochere for the accused persons

Mr. Antony Mbago Rumusu, 1st accused

Mr. Harrison Maina Kamau, 2nd accused

Mr. Daniel Ngumbi, Court Clerk