



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 54 OF 2010

REPUBLIC..... PROSECUTOR

VERSUS

JACKSON KIPTUM KIBOR ACCUSED

RULING

1. The accused *Jacson Kiptum Kibor* faces a charge of Murder contrary to *Section 203* as read with *Section 204* of the Penal Code. It is alleged that on the 13th day of September at around 11 p.m at Toror village, Chepsigot location, Keiyo District within the Rift Valley, the accused murdered *Edwin Kipkorir Kiplagat*.

2. On 27th October, 2010, accused took plea and denied the charges. The trial opened before *Hon. Mshilla J* on 23rd January, 2012 who heard a total of three witnesses. This court took over the conduct of the trial on 9th February, 2015. Under the provisions of *Section 200 (3)* as read with *Section 201 (2)* of the *Criminal Procedure Code*, the accused elected to have the trial continue from where *Hon. Mshilla J* had stopped. I then heard three other witnesses before the prosecution closed its case.

3. Both the prosecution and the defence opted not to make any submissions under *Section 306(1)* of the C.P.C. They relied on the evidence on record.

4. The standard of proof regarding whether the prosecution has established a prima facie case requiring an accused person to be put on his defence was set out in the celebrated case of ***Rhamanlal Trambaklal Bhatt V Republic (1957) EA 332*** where the court held as follows;

“The onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if at the close of the prosecution, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction.

The question 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”.

5. I have read and considered the entire evidence adduced by the prosecution witnesses in this case including the witnesses who testified before *Hon. Mshilla J*. Having done so, I find that the evidence on record is sufficient to establish a prima facie case against the accused person in this case. In the circumstances, I find that the accused has a case to answer and he is hereby placed on his defence under *Section 306 (2)* of the *Criminal Procedure Code*.

It is so ordered.

C.W GITHUA

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 28th day of July 2016.

In the presence of:-

The accused

No appearance for the state

Mr. Odhiambo holding brief for Mrs. Orina for the accused

Naomi Chonde – Court clerk