



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE NO. 13 OF 2015

(CORAM: J. A. MAKAU – J.)

REPUBLIC PROSECUTOR

VERSUS

KENNEDY CHARLES SHIOSO ACCUSED

RULING

1. The Accused **KENNEDY CHARLES SHIOSO** is facing a charge of **Murder contrary to section 203 as read with Section 204 of the Penal Code**. The particulars of the offence are that on 26th day of December 2011 at around 11.00 a.m. near Bondo University college within Bondo Township, Bondo District within Nyanza Province the accused murdered **MICHAEL MWASA WAFULA**.

2. The prosecution called four (4) witnesses in support of the charge and upon the close of the prosecution case Mr. Ooro, Learned Advocate for the Accused submitted that the accused has no case to answer provoking Mr. E. Ombati, the Prosecution Counsel to submit that the prosecution has adduced sufficient evidence to warrant the accused being part of his defence.

3. In the case of **Ramanlal Trambaklal Bhatt V Republic [1957] EA 332** the court set out the standard of proof as to what should be established in determining whether an accused person has a case to answer and stated thus:-

“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 conclusion.”

4. In the instant case the prosecution called four (4) witnesses. PW1 and PW3 testified that they witnessed the accused coming into contact with the deceased, got engaged in a quarrel and a fight that resulted into the deceased sustaining injuries from which he died at the incident. PW2 testified that the cause of death in simple terms was due to rupture of liver which in medical terms he stated it was due to intrapeitoneal bleeding due to ruptured liver capsule. PW4, the investigating officer testified he proceeded to the scene, collected the dead body and some witnesses from whom he recorded statements. That the accused on the same day took himself to the police station and PW4 detained him, as he was involved in a fight with the deceased. PW4 testified that the deceased was the aggressor in that he started

the fight.

5. I am alive to the fact that at this stage all what is required of the court is to consider whether a case is made out against the accused, just sufficiently to require him to make a defence. It is important to state at this stage the prosecution evidence may have some contradictions as to how the offence was committed. The witnesses may not agree on each and every minor detail as regards the commission of the offence, the prosecution case in other words may be strong case or a weak case but at this stage, the court is not required to apply its mind in deciding finally on whether the evidence is worthy of credit or whether, if believed it is weighty evidence to prove the case conclusively and beyond any reasonable doubt. A ruling on case to answer may be justified in a situation where some evidence points to acts attributed to the accused and linking him to the death of the deceased. The court may at this stage not be satisfied on its conclusion of the prosecution evidence but if the court is of the opinion that the case made out is one of which on full consideration might probably be thought sufficient to sustain a conviction may order that there is a case to answer. The evidence need not solidly support the charge with which the accused is charged but if the court may in its opinion be of view that a lesser offence might have been disclosed from the prosecution evidence it may find that the accused has a case to answer.

6. Having considered the prosecution evidence so far, I am satisfied that a *prima facie* case has been made against the accused to warrant the court to put the accused on his defence. The accused is according put on his defence.

DATED AND SIGNED AND DELIVERED AT SIAYA THIS 21ST DAY OF JULY, 2016

J. A. MAKAU

JUDGE

Delivered in Open Court in the Presence of:

Appellant in person present

Mr. Ooro for the Accused

Mr. E. Ombati for State.

C.C. 1. Kevin Odhiambo.

Mohammed Akideh.

J. A. MAKAU

JUDGE