



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT CRIMINAL CASE NO 114 OF 2014

REPUBLICPROSECUTOR

VERSUS

GEORGE GICHEHA GATHOGAACCUSED

RULING

1. The accused **GEORGE GICHEHA GATHOGA** is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code the particulars of which were that on the 30th day of November, 2014 at Kiawanda village Thigio location Limuru Sub County within Kiambu County unlawfully murdered SALOME WAMBUI KARIUKI.
2. He pleaded not guilty and to prove its case the prosecution called a total of ten (10) witnesses and at the close of the prosecution case the defence through Mr. Wamwayi opted not to make any submission on whether the State had made up a case to enable the court place the same on his defence
3. Section 306(2) provides that when the evidence of the witnesses for the prosecution has been concluded the court if it considers that there is evidence that the accused person or anyone or more of several accused persons committed the offence shall inform each of such accused persons of his right to address the court, either personally or by his advocate (if any) and to give evidence on his own behalf or to make unsworn statement and to call witnesses in his defence and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself and upon being informed thereof, the judge shall record the fact.
4. At this stage the court is called upon to decide whether a prima facie case has been made out by the prosecution to enable the court place the accused person on his defence as per the holding in **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC (1957) EA 332 at pg 334** thus:-

“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)

5. With the above principle in mind, I have looked at the evidence tendered by the prosecution and is satisfied that the same meets the threshold set up in the above case and find and hold that a prima facie case has been made out against the accused person sufficient enough to enable me put him which I hereby do on his defence.

6. The accused person is hereby put on his defence and is reminded of his rights under Article 50(i) (k) and (l) of Constitution of Kenya 2010 and Section 306(2) of the Criminal Procedure Code.

DATED, SIGNED and DELIVERED at Nairobi this 29th day of November, 2016.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Mwenda for the State

Ms Wanjiru for Miss Wamwayi for the Accused

Accused present

Court clerk – Tabitha