

REPUBLIC OF KENYA

High Court at Eldoret

Criminal Case 77 of 2012

REPUBLIC PROSECUTOR

VERSUS

NICHOLAS KOROS AENGWO ALIAS NIXON ACCUSED

RULING

At the close of the prosecution case, court is expected to rule on whether the prosecution has established a prima facie case against the accused.

The definition of what a prima facie is, is well defined in the well known case of **RAMANLAL TRANMBAKLAL BHATT -V- REPUBLIC (1957) EA, 332** in the following words:-

“1. 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 case the case is merely one, which on full consideration might possibly be thought sufficient to sustain a conviction.

2. The question whether there is a case to answer cannot depend only on whether there is some evidence irrespective of its credibility or weight, sufficient to put the accuse on his defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence”

In this case, eight prosecution witnesses have testified, PW2, 4 and 7 were eye witnesses who saw what transpired at the scene. It is not in doubt that the accused had a confrontation with the deceased which led to a scuffle prior to the death of the deceased. The eye witnesses testified that they saw the accused kick the deceased with his leg on the side of the stomach as a result of which the deceased fell down. That as they tried to give him first aid they realized he had died.

The post mortem report (P.Ext.1) produced by PW1 the doctor who conducted the post mortem exercise confirmed that the deceased died of injuries consistent with those he had sustained upon being assaulted by the accused. It is no doubt therefore, it is the accused who rendered the fatal blow to the deceased. It is also apparent the accused realized what he had done and he immediately fled from the scene. In the instance, I rule that the prosecution prima facie, has established that the death was occasioned by the accused. However, as to the motive that actuated the accused to cause the death, is an issue to be determined later on in the Judgment of the court.

I do accordingly overrule the defence and find that a prima facie case has been made out and I hereby put the accused on his defence.

DATED and DELIVERED at ELDORET this 18th day of March, 2013.

**G. W. NGENYE – MACHARIA
JUDGE**

In the presence of:

Mr. Miyianda Advocate for the Accused

Mr. Omwenga for the State