



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 2 OF 2008

REPUBLIC PROSECUTOR

VERSUS

CORNELIUS KIPKOSGEI KOGO ACCUSED

RULING ON A CASE TO ANSWER

The accused, Cornelius Kipkosgei Kogo is charged with the offence of murder Contrary to Section 203 as read with Section 204 of the Penal Code.

Particulars of the charge are that on the 19th day of August, 2007 at Huresi Village in Nandi South District of the Rift Valley Province, murdered Julius Kipruto Lelei.

The standard of proof as to whether the prosecution has established a prima facie case was laid down in the celebrated case of **RAMANLAL TRAMBAKLAL BHATT -VS- REPUBLIC (1957) E.A. 332** as follows:-

"(i) 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.

(ii) 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 accused on his defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence."

And in **R -VS- JAGJIVAN M. PATEL AND 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 conclusion."

It is worth to note that I only heard the evidence of PW9 and PW10. Be that as it may, I have read the typed proceedings of the witnesses who testified previously. PW1 William Kimeli Bitok saw

the accused striking the deceased with a panga.

PW3, Christina Kurgat placed the accused at the scene before she learnt of the death of the deceased. On the fateful evening, she was walking home from a posho mill when she found the accused and the deceased quarrelling. On the following morning, he learnt that the deceased had died.

PW4 and 5 confirmed that the deceased died at the scene that was described by PW1.

PW10, Doctor Kebor Daniel who produced the deceased's Post Mortem Report confirmed that the deceased died from injuries consistent with the testimony of PW1. He said the deceased had a cut wound on the head which is the part of the body the accused is said to have struck the deceased.

In the event, I find that the prosecution has established a prima facie case against the accused to warrant me to put him on his defence. He is accordingly placed on his defence.

DATED and **DELIVERED** at **ELDORET** this 19th day of November, 2013.

G. W. NGENYE – MACHARIA

JUDGE

In the presence of:

Mr. Miyienda holding brief for Misoi Advocate for the Accused

Mr. Omwega for the State