

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
CRIMINAL CASE NO.41 OF 2010

REPUBLIC..... COMPLAINANT

VERSUS

MUSILI TULU..... ACCUSED

RULING

I have had the benefit of reviewing the prosecution case as revealed by the six prosecution witnesses who have so far testified. I have also carefully read and considered rival written submissions on no case to answer and authorities cited by respective counsel. I have no doubt at all in my mind that the prosecution has established a prima facie case against the accused to warrant him being placed on his defence. Of course, I am cognizant of the fact that and as stated by **Sir Newham Worley P.** in the case of **Ramanlal T. Bhatt Vs. R.(1957) E.A. 332**

“... the court is not required at this stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by a “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.”

I note from the submissions of counsel for the accused though that he is addressing the issue of trial within a trial. This is way off the mark. He did not object to the tendering in evidence by the prosecution, the accused’s statement under inquiry and charge and cautionary statement as to call in aid a trial within a trial. I therefore did not order a trial within a trial as to call for a ruling. The accused’s submissions on that score are therefore totally misconceived and or misplaced. It is a belated attempt to reopen the case on the issue of admissibility of the accused’s statement under inquiry and charge and cautionary statement.

In the end I find that the accused has a case to answer. He is reminded of his statutory rights under section 306(2) of the criminal procedure code, in that he can elect to give sworn or unsworn statements of defence or even keep quiet. If he elects to give a sworn statement of defence, he may be liable to cross-examination by the prosecution and not so if he elects to give unsworn statement of defence or even keep quiet. In all the above scenarios however, he is entitled to call witnesses.

I will now invite the accused to address me on how he intends to defend himself.

Ruling **dated** and **delivered** at **Machakos**, this **31st** day of **January**, 2012.

ASIKE-MAKHANDIA
JUDGE