



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**CRIMINAL CASE NO.27 OF 2006**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**LEONARD MUTISYA MWANZIA..... ACCUSED**

**RULING**

I have had the benefit of considering the prosecution case so far in the light of the evidence presented by its eight prosecution witnesses. The prosecution having closed its case, I am at this juncture only required to determine whether the prosecution has established a prima facie case against the accused to warrant him being placed on his defence. What is required of the prosecution at this point in time is to establish a prima facie case against the accused as opposed to proving the case against the accused beyond reasonable doubt. As articulated 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.”***

To my mind, the prosecution has effectively discharged this burden.

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, signed and delivered at Machakos, this 15<sup>th</sup> day of February, 2012.**

**ASIKE-MAKHANDIA**

**JUDGE**