

REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT MACHAKOS

CRIMINAL CASE 38 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

ANTHONY MUEMA MUTISYA.....ACCUSED

RULING

I have had the benefit of considering the prosecution case so far in the light of the evidence presented by its prosecution witnesses. I have also read and considered carefully rival written submissions on record. The prosecution having closed its case, I am at this juncture only required to determine if 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 juncture 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 of making out a *prima facie* case against the accused.

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 statement of defence or even keep quiet. If she 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 respects however, she 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 30TH day of JULY 2012.

ASIKE - MAKHANDIA

JUDGE