Republic v Kirui (Criminal Case 25 of 2018) [2025] KEHC 39 (KLR) (14 January 2025) (Ruling)

Neutral citation: [2025] KEHC 39 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BOMET

CRIMINAL CASE 25 OF 2018

RL KORIR, J

JANUARY 14, 2025

BETWEEN

REPUBLIC ..... PROSECUTOR

AND

ROBERT KIPLANGAT KIRUI ..... ACCUSED

RULING

1. The Accused was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the charge were that on the 30th day of September, 2018 at Chepkolon Village in Merigi Location within Bomet County murdered one Richard Cheruiyot.

2. On 25th October, 2018, the Accused took plea before Muya J and pleaded not guilty. The case went into full trial in which the prosecution called a total of eight (8) witnesses before closing their case on 6th November 2024.

3. Despite being given time extension to file their written submissions on whether the Accused had a case to answer, the Prosecution failed to do so.

4. The Accused however filed his submissions on 4th December 2024. Without going into detail, I shall summarize his submissions hereunder.

5. The Accused submitted that the Prosecution had failed to prove the elements of murder (mens rea and actus reus) and therefore the charge against him could not stand. He relied on section 206 of the Penal Code, Republic vs James Kioko Malungu (2021) eKLR and Republic vs Joseph Nzomo Kitoo [2021] KEHC 9761 (KLR).

6. It was the Accused's submission that the Prosecution failed to prove their case beyond reasonable doubt. He relied on Republic vs Martin Thingunku (2021) eKLR and Republic vs Nixon Kiprono Kigen (2016) eKLR.

7. At this stage of the proceedings what the court is required to do is to establish whether a prima facie case has been established. In the case of Ramanlal Trambaklal Bhatt vs Republic (1957) E.A 332, the Court held that:-

> " Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot argue that a prima facie case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggesting that the court could not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case, nor can we argue that the question whether there is a case to answer depends 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... It may not be easy to define what is meant by 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."
>
> (See also Republic vs. Abdi Ibrahim Owl (2013) eKLR)

8. In analysing the evidence at this stage, I am not expected to give a detailed analysis and arrive at a firm finding on the guilt of the Accused. I agree with the caution in Republic vs Robert Zippor Nzilu (2020) eKLR, where Odunga J (as he then was) stated that:-

> " That there is a danger in making definitive findings at this stage, especially where the Court finds that there is a case to answer is not farfetched and the reasons for not doing so are obvious. As was appreciated by Trevelyan and Chesoni, JJ in Festo Wandera Mukando vs. The Republic (1980) KLR 103:
>
> > " We once more draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgement. Where a submission of "no case" is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the count or counts concerned."

9. Further in the case of Republic vs Samuel Karanja Kiria (2009) eKLR, J.B. Ojwang J. (as he then was) restated the importance of not compromising the quality of the defence by a detailed analysis at this stage. His Lordship held:-

> " The question at this stage is not whether or not the accused is guilty as charged but whether there is such cogent evidence of his connection with the circumstances in which the killing of the deceased occurred, that the concept of prima facie case dictates as a matter of law that an opportunity be created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled . . .
>
> The Court of Appeal Criminal Appeal No. 77 of 2006, the Court of Appeal expressed that too detailed analysis of evidence, at no case to answer stage is undesirable if the court is going to put the accused onto his defence as too much details in the trial court's ruling could then compromise the evidentiary quality of the defence to be mounted." (Emphasis added).

10. I have carefully considered the evidence on record including the exhibits. From my analysis of the evidence, I am satisfied that the Prosecution has established a prima facie case against the Accused.

11. It is my finding that the Accused has a case to answer. He is called upon to elect the mode of his defence in accordance to section 306 of the Criminal Procedure Code.

Orders Accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 14TH DAY OF JANUARY, 2025.

.....

R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Accused, Mr. Mugumya for the Accused, Mr. Ayieka holding brief for Mr. Njeru and Siele (Court Assistant).