**Republic v Cyprian (Criminal Case 18 of 2016)**
**[2025] KEHC 2735 (KLR) (11 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2735 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MERU**

**CRIMINAL CASE 18 OF 2016**

**HM NYAGA, J**

**FEBRUARY 11, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**DOUGLAS KARANI CYPRIAN ..... ACCUSED**

**RULING**

1. The accused is charged with the offence of murder contrary to section 203 as read section 204 of the *Penal Code*. The Particulars of the offence were that on the night of 24th January 2016, at Nkungungu Trading Cente in South Imenti Sub-County within Meru County, he murdered Janairo Gitonga M'anini.

2. On 7th April 2016, the charge was read to the accused and he pleaded not guilty and thereafter the trial ensued with prosecution calling a total of four (4) witnesses in support of its case. None of the parties filed submissions on no case to answer.

3. The case was heard before my sister Hon. Justcice T. W. Cherere and the Prosecution closed its case. The accused absconded while the matter was awaiting a ruling on a case to answer. He was subsequently arrested and the court complied with section 200(3) of the *Criminal Procedure Code*(CPC). The accused's advocate opted to have the case proceed from where it had reached, at the ruling stage.

4. At this stage the court's duty is to determine whether the prosecution has made out a prima facie case to require the accused to be put on his defence.

5. Under section 306(1) of the *Criminal Procedure Code* when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is no evidence that the accused person committed the offence the court should, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.

6. Under section 306(2) on the other hand, when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is evidence that the accused person committed the offence, the court should proceed to put the accused to his defence and inform him of his right to call evidence in support of his case

7. What then is a prima facie case? The test of this was settled in the case of Ramanlal T. Bhatt -v- Republic [1957] E.A. 332 where the court expressed itself as follows:

> " Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is 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." This is perilously near suggesting that the court would 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 agree 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 is 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."

8. In Republic vs. Abdi Ibrahim Owl [2013] eKLR a prima facie case was defined as follows: -

> " Prima facie" is a Latin word defined by Black's Law Dictionary, 8th Edition as "Sufficient to establish a fact or raise a presumption unless disproved or rebutted". "Prima facie case" is defined by the same dictionary as "The establishment of a legally required rebuttable presumption". To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with.

9. The court should therefore determine whether based on the evidence placed before it can convict if the accused chose not to give any evidence. In May vs. O'Sullivan [1955] 92 CLR 654 it was held that:

> " When at the close of the case for the prosecution a submission is made that there is no case to answer, the question to be decided is not whether on the evidence as it stands the defendant ought to be convicted, but whether on the evidence as it stands he could lawfully be convicted. This is a really question of law."

10. The court need not go through the evidence at this stage as there is a danger of making definitive findings, especially where the Court is of the view that there is a case to answer. This was well stated by the court in the case of Festo Wandera Mukando vs. The Republic [1980] KLR 103 where it stated as follows;

> " ...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."

11. From the foregoing and without delving into the merits of the prosecution's case it is my opinion that the prosecution has established a prima facie case to warrant the accused being put on the defence in terms of section 306 (2) of the *Criminal Procedure Code*.

**SIGNED AND DELIVERED AT MERU THIS 11TH DAY OF FEBRUARY 2025.**

**H. M. NYAGA**

**JUDGE**

In the presence of;

C/A Jeniffer

State counsel Ms Murunga

Accused -