Republic v Siatah (Criminal Case E040 of 2021) [2025] KEHC 5962 (KLR) (9 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5962 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAPSABET

CRIMINAL CASE E040 OF 2021

JR KARANJA, J

MAY 9, 2025

BETWEEN

REPUBLIC ..... PROSECUTOR

AND

ISAAC SIRENGO SIATAH ..... ACCUSED

RULING

1. Vide the information filed herein on 12th January 2016 by the Office of the Director of Public Prosecutions, the court was informed that Isaac Sirengo Siatah [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 are that on the 1st day of March 204 at about 2:00am at Saniak Village Kimoiywo Location, Nandi North District within Nandi County, murdered Edwin Kipchumba.

2. The Accused appeared in court on 26th January 2016 and denied the charge. The hearing of the case effectively commenced on 22nd May 2024, almost eight [8] years after the plea was taken. On that date the prosecution called two witnesses i.e. Dr. Evans Kibiwott Ngetich [PW1] and Joel Kipchumba Metto [PW2] and thereafter sought for an adjournment to call an additional nine [9] witnesses who never appeared in court on subsequent days set for further hearing of the case. The prosecution therefore attempted to enter a "*nolle-prosequi*" in this matter, but this court rejected the same and directed that the matter do proceed forthwith.

3. The prosecution, having not availed nor bonded the remainder of the witnesses applied for the uptenth time to have the matter adjourned further for further hearing. The application was opposed by the defence and the family of the deceased. The court considered the application and the objection thereto and disallowed it. The prosecution was ordered to proceed with the case, but having no other witnesses to call nor having any indication as to whether the witnesses were bonded or not bonded to appear in court, the prosecution closed its case.

4. As at the close of the prosecution case the prosecution had called only two witnesses to lead evidence against the Accused and establish the necessary ingredients of the charge to allow the Accused to be placed on his defence.

   However, the Accused through his counsel, Mr. Kamau, Learned Counsel, submitted that the prosecution had failed to establish a *prima facie* case warranting him to be placed on his defence on the basis that the information and the post-mortem [P. Exhibit 1] allude to a discrepancy in the name of the deceased which was not explained by the prosecution. That, the evidence does not support the charge and that no witness was called to identify the body of the deceased.

5. The Accused submitted that the cause of death was haemothorax due to gunshot wounds, but there was no evidence from the prosecution to show that it was him [Accused] who shot and killed the deceased. That, the weapon used in the alleged shooting of the deceased was not produced neither was a ballistic expert called to testify in court. It was further submitted by the Accused that the cause of death was not proved and that most importantly, there were no witnesses to link or connect him with the offence as the retired chief [PW2] did not witness the offence being committed.

6. Indeed, at the close of the prosecution case. The prosecution was expected to have presented sufficient and credible evidence to not only establish the necessary ingredients of the charge but also the identity of the person alleged to have committed the offence.

   A *prima facie* case is one which is based on the first impression and accepted as correct until proved otherwise. It refers to evidence which on the face of it is sufficient to prove a fact or proposition unless rebutted or contradicted by further evidence.

7. Under Section 306[1] of the *Criminal Procedure Code*: -

   > " When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the Accused or any one of the several or any one of the several Accused committed the offence shall, after hearing, if necessary any arguments which the advocate for the prosecution on the defence may desire to submit, record a finding of not guilty."

8. The leading decision on the definition of a *prima facie* case is the case of *Ramanlal Trambaklael Bhatt v. Republic* [1957]EA 332, where it was stated: -

   > " 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's case the case is merely one in which on full consideration might possible be thought sufficient to sustain a conviction."
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   > This is periously near suggesting that the court could not be prepared to convict if no defence is made, but rather, hopes the defence will fill the gap in the prosecution case. Nor can we agree that the question – 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 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."

9. This court, having considered the submissions herein, the aforementioned legal principles and the evidence of the two witnesses [PW1 & No. 2] availed by the prosecution would find that the evidence is insufficient in establishing the material ingredients of the offence of murder and thus, a *prima facie* to warrant that the Accused be placed on his defence.

Ultimately, the Accused has no case to answer and is hereby found not guilty and acquitted under Section 306 of the *Criminal Procedure Code*.

DELIVERED AND DATED THIS 9TH DAY OF MAY 2025

HON. J. R. KARANJAH,

JUDGE