Republic v Muchangi (Criminal Case 24 of 2018)
[2024] KEHC 988 (KLR) (8 February 2024) (Ruling)

Neutral citation: [2024] KEHC 988 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL CASE 24 OF 2018

HM NYAGA, J

FEBRUARY 8, 2024

BETWEEN

REPUBLIC ..... PROSECUTION

AND

GIVEL WAWERU MUCHANGI ..... ACCUSED

RULING

1. The accused person, Givel Waweru Muchangi, was charged with two counts of the offence of murder contrary to section 203 as read section 204 of the *Penal Code*.

2. The Particulars of the first count were that on the 14th May 2018 at Ngondu B area, Mosop Location, Njoro Sub-County within Nakuru County he murdered Mary Wanjiku Mureithi.

3. The Particulars of the second count were that on the 14th May 2018 at Ngondu B area, Mosop Location, Njoro Sub-County within Nakuru County he murdered Francis Mureithi Waweru.

4. On 30th May 2018 the charges were read to the accused. He pleaded not guilty and thereafter the trial ensued with prosecution calling a total of seven (7) witnesses in support of its case.

5. Upon the close of the prosecution case, neither the defence counsel nor the prosecutor presented any submissions.

Analysis & Determination

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

7. 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.

8. 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

9. What then is a *prima facie* case? The test of this was settled in the case of *Ramanlal T. Bhatt v Republic* [1957] EA 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."

10. In *Republic v 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.

11. The court should therefore determine whether, based on the evidence placed before, it can convict the accused if he chose not to give any evidence, as he is entitled to by the law.

12. It is imperative to note that "proof beyond reasonable doubt" is not the standard applicable to the finding of existence of a *prima facie* case for the purpose of a case to answer.

13. In *May v O'Sullivan* [1955] 92 CLR 654 it was therefore 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."

14. There is a danger in making definitive findings at this stage, especially where the Court is of the view that there is a case to answer. This position was well described and appreciated by Trevelyan and Chesoni, JJ in Festo *Wandera Mukando v The Republic* [1980] KLR 103. The court held that;

> "...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."

15. 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 on both counts, in terms of section 306 (2) of the *Criminal Procedure Code*.

16. The accused person is to be explained of his rights under section 306(2) of the said *Code*.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 8TH DAY OF FEBRUARY 2024.

H. M. NYAGA

JUDGE

In the presence of;

C/A Jeniffer

State counsel Mr. Okachi

Accused –