



**Republic v Manyara (Criminal Case 66 of 2013)
[2024] KEHC 1898 (KLR) (1 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 1898 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 66 OF 2013
JRA WANANDA, J
MARCH 1, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ISAAC MUNGA MANYARA ACCUSED

RULING

1. It is regrettable and unacceptable that this case has been in Court since 2013. That is 11 years so far and the case is still not yet concluded.
2. 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 offence are that on 15/07/2013, at Moi’s Bridge trading centre, Moi’s Bridge location in Eldoret West District, within Uasin Gishu County, jointly with others not before Court, he murdered one Samuel Gitau Njoroge.
3. The Accused was represented by Ms. Karuga Advocate. He pleaded not guilty and the matter proceeded to trial. The prosecution called 5 witnesses.
4. All the 5 witnesses testified before Hon. Lady Justice O. Sewe before she was transferred. The trial was then taken over by Hon. E. Ogola who however was also transferred before he could take the evidence of any witness or finalize the case. I then took over the matter when it first came before me on 17/05/2023. Initially, the Prosecution intended to call more witnesses but abandoned that quest after what Ms. Okok, State Counsel, described as challenges in tracing the witnesses. The Prosecution therefore closed its case on 12/10/2023.
5. I therefore did not see or hear of any of the witnesses and I am therefore only relying on the record. For avoidance of doubt however, I confirm that since the case was part-heard when I took it over, directions were taken under Section 200(3) of the Criminal Procedure Act and pursuant thereto, the parties



agreed, by consent, to proceed with the trial before me from where it stopped. There was therefore no demand to recall any witnesses or begin the case “*de novo*”.

6. After close of the prosecution case, I gave the parties liberty to file written Submissions on “case to answer”. Pursuant thereto, the Prosecution filed its Submissions on 22/01/2023 while the Defence filed on 23/01/2023.

Prosecution’s Submissions

7. Counsel for the State cited Section 203 aforesaid and submitted that to prove the offence of murder, the following ingredients must be met; (a) that the death of the deceased occurred and the cause of that death, (b) that the Accused committed the unlawful act which caused the death of the deceased; and (c) that the Accused had malice aforethought.
8. Counsel urged that the death of the deceased is not disputed, that PW1, PW2, PW4 and PW5 all saw the body of the deceased and PW1, PW2 and PW5 saw the injuries on the body, that the cause of death was proved by way of medical evidence adduced by PW2, that the Accused was placed at the scene of the crime and is well known by PW3 and PW4, that they were properly identified as there was sufficient light emanating from the security lights at the scene, that both PW3 and PW4 confirmed that the Accused and the deceased were engaged in a fight, that according to PW4, the deceased was armed with a knife, and PW3 also testified that he saw the Accused bleeding and holding the hand of the deceased who was holding a knife. Counsel submitted further that PW3 and PW4 testified that shortly after the Accused and the deceased were separated, they went to the pool table room and found the deceased lying dead, that PW4 noted that the deceased was bleeding, and that when PW5 arrived, he noted that the deceased had a stab wound on the right side. Counsel argued further that granted, none of the witnesses saw the Accused stabbing the deceased, however, it may be safe to conclude that the Accused did indeed stab the deceased during the fight, that the Accused used excessive force and that it is that unlawful act of the Accused – assault - that caused the death of the deceased.
9. Counsel argued further that the question that needs to be answered is whether the Accused had malice aforethought. She cited Section 206 of the Penal Code whereof the establishment of malice aforethought is explained and submitted that it is the injury that led to the deceased’s death and that it was intended to cause grievous harm to the deceased. She therefore urged the Court to place the Accused on his defence.

Defence Submissions

10. Counsel for the Accused submitted that for a charge of murder to succeed, the prosecution has to prove the existence of “*mens rea*” and “*actus reus*”. She cited the case of *Republic vs Dorothy Awuor Juma*. Regarding proof and cause of death, Counsel conceded that there is no doubt that the deceased died and that the cause of death was established.
11. Regarding “*actus reus*”, Counsel submitted that the prosecution failed to prove that it is the act of the Accused that caused the death, that PW1, PW3, PW4 all testified that the deceased was found dead in the pool table room, that none of them saw the Accused stabbing the deceased, that PW3 (the pub owner) testified that the Accused was fighting with the deceased when the deceased stabbed the Accused, that PW3 separated the two and took the deceased who was holding a knife to a safe place - the pool table room – away from the Accused who was already injured and was receiving 1st aid, that PW3 stated that the deceased was walking well and had no injuries when going to the pool table room, that it is the police who told the accused to go to hospital for treatment, that all this while, the deceased was in a safe place away from the injured Accused, that the Accused left the scene when the deceased



had no injuries and that PW3 did not see who stabbed the deceased. Counsel added that PW4 testified that he was called to come and help separate the fight only to find the accused bleeding, that it is PW4 who applied 1st aid on the Accused, that all this while, the deceased was held in the pool table room and that PW4, too, did not see who stabbed the deceased. She urged further that PW5, the Investigating Officer stated that they were called to the scene when the deceased was already dead, that on arrival, they were informed that 3 people were fighting – deceased, Accused and one Esau (who is not before Court - that the Accused presented himself to the station to record a statement about being stabbed by the deceased when he was arrested and that the knife or object used to stab the deceased was never recovered. According to Counsel the prosecution’s case is mere suspicion as none of the testimonies linked the Accused to the death. She referred to the case of *Sawe v Rep* [2003] KLR 364 and submitted that none of the witnesses saw the accused stabbing the deceased.

12. Regarding “*Mens Rea*”, Counsel cited Section 203 and 206 of the Penal Code and submitted that neither PW1 or PW5, who stated that the accused and the deceased were fighting, gave testimony that the accused wanted to kill the deceased.
13. Counsel cited Article 50(2) of the *Constitution* on the presumption of innocence and Section 107(1) of the *Evidence Act* on the burden of proof. On what constitutes proof beyond reasonable doubt, Counsel cited the case of R vs Silas Magongo Onzere alias Fredrick Namena [2017] eKLR and the case of *Miller vs Minister of Pensions* [1947] 2 ALL ER 372-373. As to what amounts to “*prima facie*” case, she cited the case of R.T. *Bhatt v Republic* [1957] eKLR and submitted that for this Court to find that the Accused has a case to answer, the Court must be satisfied that the evidence adduced, as it stands, can warrant lawful conviction of the Accused and that there should be no doubt as to whether the accused committed the crime by just looking at the evidence before Court, that the law does not rely on assumptions, and it is upon the prosecution to prove each fact they allege.
14. She submitted further that the witnesses gave conflicting evidence, that PW3 stated that they called the police when they learnt that the Accused had been stabbed and was bleeding and that the officers came and told the Accused to go to hospital for treatment, that however PW5 stated that when they arrived at the scene, they did not find the Accused as he had run away. Counsel added that PW3 stated that when the police came, the deceased was well and was in the pool table room and that it was only the Accused who was injured, and that the police left after the Accused had left the scene. According to Counsel therefore, the Accused could not have gone back to the pool table room which, as per the evidence of PW3 and PW4, was locked and also that none of the witnesses’ testimonies places the Accused at the pool table room stabbing the deceased. In conclusion, Counsel submitted that the evidence is inconclusive and obviously unreliable and should not sustain a conviction.

Determination

15. What this Court is called upon is to determine whether, at this stage of the proceedings, based on the evidence adduced by the witnesses, the prosecution has established a prima facie case to warrant the Accused person to be placed on his defence to answer to the charge.
16. Section 306(1) and (2) of the *Criminal Procedure Code* requires the Court, after closure of the prosecution’s case, to make a determination on whether an accused person has a case to answer. The section provides as follows:

- “(1) 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 several accused committed the offence, shall 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.

- (2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact

17. At this stage therefore, the prosecution is required to only establish the existence of a prima facie case. “Prima facie” means the establishment of a rebuttable presumption that an Accused person is guilty of the offence he/she is charged with. This was explained in the case of *Ramanlal Trambaklal Bhatt v R* [1957] E.A 332 at 335, in the following terms:

“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.”

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 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, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”.

18. For the offence of murder to be proved, the prosecution is required to establish proof of death of the deceased and the cause thereof, proof of an unlawful act or omission on the part of the accused resulting in the death of the deceased, and malice aforethought on the part of the accused.
19. That the deceased died is not in dispute. The events leading up to the death of the deceased were alleged to be that he deliberately pushed a moving motorcycle that was carrying 3 people, including the Accused, and it fell down. It is said that a fight then ensued between the deceased and the Accused, that the fight started outside the establishment christened “Farmers’ Bar and Restaurant” and then moved inside and then into its kitchen. This was the evidence of PW3, Stanley Mwangi Chege.
20. PW4, John Kariuki Kuria, testified that he was at the scene and at around 12.40 am he was called by a watchman who informed him of the fight. He can therefore be deemed to have corroborated the evidence of PW3 regarding the fight in the kitchen.
21. PW5 was the Investigating Officer, Corporal Samson Muriithi. He testified that he was called to the scene while on patrol on that night, that on arrival, he found the deceased lying in a pool of blood in a room where there was a pool table, he was informed that the deceased and the accused had fought in the kitchen, that during his investigations, he discovered that the accused and another person who



was at large caused the death of the deceased by stabbing him on the left side of the abdomen and that they had all been drinking together before the fight ensued.

22. PW1 was the Crime Scene Officer, Corporal Simon Likonyi, who documented the scene. The photographs he took show the deceased lying dead in a pool of blood within the pool table room of the Restaurant and also displayed the stab wound on the right side of the ribs
23. The post mortem Report was produced by PW2, Dr Soita Francis. He explained that the deceased had a penetrating stab wound on the right side of the abdomen and a cut wound on the left arm. He confirmed the cause of death as severe internal haemorrhaging in the abdominal cavity.
24. At this stage of the proceedings, the standard of proof is not yet one of proof beyond any reasonable doubt. The Supreme Court of Canada in *R -v- Morabito* [1949] SCR 172 drew attention on this fact when it held that:

“When assessing the prosecution case in consequence of no case submissions, the question of reasonable doubt does not arise at that stage.”
25. What is therefore required is evidence that would establish the guilt of the accused and call upon him to be heard before final determination.
26. As aforesaid, the death of the deceased is not in dispute. The cause of death was also established to have been internal haemorrhaging in the abdominal cavity. As to whether there was malice aforethought, this cannot be conclusively established at this juncture. However, the evidence on record so far, places the accused person at the scene of the crime and it was also strongly alleged that he was involved in a scuffle with the deceased. He has also been identified by the witnesses who claim that there was proper lighting from the security lights. There is therefore evidence that the Accused may have been responsible for the death of the deceased. However, I must caution myself that at this stage, I should not make definitive findings should I conclude that the accused has a case to answer.
27. With the above caution in mind, I will only state that I have considered the testimonies of the witnesses and without delving into the depths of their testimonies, I am satisfied that the Prosecution has established a prima facie case against the accused person to warrant him to be placed on his defence. I therefore find that the accused - Isaac Munga Manyara - has a case to answer and he is therefore placed on his defence.
28. Pursuant to my findings above, the Accused is now informed of his rights under Article 50(2)(i) and (k) of the Constitution and also under Section 306(2) as read with Section 307 of the Criminal Procedure Code, to address the Court. Accordingly, he is informed and it is explained to him, in the presence of his Advocate, that he has a right to address the Court either personally or by his Advocate and to give evidence on his own behalf or to give unsworn statements, and to call witnesses in his defence.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 1ST DAY OF MARCH 2024

.....

WANANDA J.R. ANURO

JUDGE

