Republic v Loloi & 6 others (Criminal Case E014 of 2021)
[2024] KEHC 3224 (KLR) (4 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3224 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT LODWAR

CRIMINAL CASE E014 OF 2021

RN NYAKUNDI, J

APRIL 4, 2024

BETWEEN

REPUBLIC ..... PROSECUTOR

AND

JOSEPH LOLOI ..... 1ST ACCUSED

EKWAR EKAI ..... 2ND ACCUSED

MUSA ABDI AMADOK ..... 3RD ACCUSED

DANIEL EROT ..... 4TH ACCUSED

JOHN LOKOL ..... 5TH ACCUSED

JOSEPH KOECH ..... 6TH ACCUSED

ACHUKA LOKAALE ..... 7TH ACCUSED

RULING

1. The accused persons are jointly charged by the state of murder contrary to section 203 as read with 204 of the *penal code*. The brief particulars being that on the 2nd day of October, 2021, at Kalobeyei trading centre in Turkana West sub-county within Turkana County murdered Benson Lokaale alias Lochumbi.

2. Each of the accused persons pleaded not guilty. The lead prosecution counsel Assistant Director Mr. Kakoi whereas Mr. Karanja Advocate represented the accused persons. In discharging the burden of proof under Art. 50 (2) (a) of the *constitution* and section 107 (1), (108) & (109) of the *Evidence Act* the prosecution summoned seven (7) witnesses in support of the charge and the following documentary evidence;

    i. Identification parade

ii. Government analyst Report

iii. Exhibit Memo

iv. Post mortem Report

3. The guiding legal framework for a high court to make a determination on existence of a prima facie case or in the alternative a motion of no case to answer is clearly provided for under section 306 of the criminal procedure code.

4. As the accused persons are charged under section 203 and punishable in terms of section 204 of the penal code at the end of the game the prosecution must proof the following elements beyond reasonable doubt. See the case of *Miller –vs- Minister of Pensions* (1947)2 ALL ER Page 372 @ 373

   a. The victim's death

   b. That the accused persons caused the death of the deceased without lawful justification or excuse

   c. That at the time of committing the offence the accused persons did the unlawful act jointly and with malice afterthought. See section 206 & 213 of the *penal code*.

   d. That in the whole the accused persons were positively identified and placed at the scene of the murder.

5. Being half time state of the proceedings before any evidence is taken from the defence there is a cautionary principle that in exercising discretion the trial court should not evaluate evidence in detail or consider the credibility of witnesses. That is the space reserved upon hearing the defence as to the allegations made by the prosecution witnesses. As profoundly now stated by the Supreme Court of Nigeria in *Tongo vs C.O.P* [2007]12 N.W.L.R. Thus therefore, when a submission of no prima facie case is made on behalf of an accused person, the trial court is not thereby called upon at that stage to express any opinion on the evidence before it. The court is only called upon to take note and to rule accordingly that there is before the court no legally admissible evidence linking the accused person with the commission of the offence with which he is charged. If the submission is based on discredited evidence, such discredit must be apparent on the face of the record, if such is not the case, then the submission is bound to fail.

6. The other relevant approach to the facts of the case before me is as stated by Lord Lane in *R –vs – Galbraith* [1981] 1.W.L.R. 1039 where he said:

   1. "If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

   2. The difficulty arises where there is some evidence but it is of a tenuous nature for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.

      (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

      (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the

defendant is guilty then the judge should allow the matter to be tried by the jury. There will of course, as always in this branch of the law be borderline cases. They can safely be left to the discretion to the judge".

7. In addition the court in *Ajiboye & Another v The state* [1995] 9 SCNJ 242 at 252 – 257 stated as follows:

> But a prima facie case must be distinguished from proof of guilt of an accused which is determined at the end of the case when the court has to find out whether such an accused is guilty or not guilty of the offence charged... n a no case submission therefore, whether or not the evidence of the prosecution is believed is, at the stage of the proceedings, irrelevant and immaterial as the credibility of the witnesses is neither in issue then nor does it arise". Whilst it is not the aim of this court to discourage a judge form discussing matters of interest in his judgment, we would like to warn against any ruling of inordinate length in a submission of no case to answer, as too much might be said, as was done in this case, which at the end of the case might letter the judge's discretion ... it is wiser to be brief and make no observation on the facts."

8. Given the above guidelines I have appraised the features and characteristics of the seven (7) prosecution witnesses in regard with the elements of the offence, I find the available evidence indicative of the death of the deceased. It is also further evident from the post mortem report produced as exhibit 5 dated 6th October, 2021 that a doctor who conducted the autopsy examination stated to the effect that the deceased suffered multiple injuries to the upper arm, occipital region with depressed skull fracture, bruising of the trunk, costal region and cerebral contusion. Upon further review of the prosecution evidence in consonant with section 203 of the penal code it is this court's findings that the accused persons jointly have a case to answer based on the doctrine of a prima facie case as stipulated in section 306 of the criminal procedure code. I am now hoping that by this commentary I have crossed the threshold illuminated in *Ajiboye v State* Supra and Chief Odof in *Bello v The State* [1967] N.W.L.R. 1. In making this finding it is my persuasion that the case for the prosecution cannot be said to be inherently weak as to render the other alternative remedy of a motion of no case to answer in favour of the accused persons more plausible. The prosecution in this first instance bears the higher score-card to warrant it's case to call for rebuttal evidence.

   It is so ordered.

DATED, SIGNED AND DELIVERED AT LODWAR THIS 4th DAY OF APRIL, 2024

In the presence of;

Mr. Kakoi for the state

Karanja for the accused persons

Accused persons present

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R. NYAKUNDI

JUDGE