Republic v Farah (Criminal Case 6 of 2020) [2024] KEHC 5631 (KLR) (22 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5631 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT GARISSA

CRIMINAL CASE 6 OF 2020

JN ONYIEGO, J

MAY 22, 2024

BETWEEN

REPUBLIC ..... PROSECUTION

AND

MOHAMED HUSSEIN FARAH ..... ACCUSED

RULING

1. Accused person herein is charged with the offence of murder contrary to section 203 as read out with section 2004 of the *Penal code*. Particulars are that on 11th January 2020 at Bulla ADC football field in Garissa Sub-County, within Garissa County, he murdered John Mwaka Voya.

2. Upon returning a plea of not guilty, the matter proceeded to full trial with the prosecution calling a total of 8 witnesses in order to prove its case. Having closed its case, accused filed his submissions through Nyipolo and company advocates supporting the position that prosecution had failed to establish a primafacie case hence he should be acquitted for lack of a case to answer.

3. By virtue of section 306 of *Criminal Procedure Code*, this court has a legal duty, upon close of the prosecution's case, to make a ruling or a decision on whether the accused person has a case to answer or not. Under Section 306(1), 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 or any one of or more of several accused persons 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.

4. Under section 306(2), 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 or any one or more of several accused persons committed the offence, the court should proceed to put the accused to his/ their defence and in such a circumstance, the accused is supposed to present evidence in defence.

5. As such, at this stage, this court's role is to consider the evidence on record and make a determination as to whether the same presents a prima facie case that would warrant this court to call upon the accused

to give his defence. In the case of *Ronald Nyaga Kiura vs Republic* [2018] eKLR the court stated as follows in relation to a *prima facie* case;

> " It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the *Criminal Procedure Code*. A *prima facie* case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person. This is well illustrated in the cited Court of Appeal case of *Ramanlal Bhat vs Republic* [1957] Ea 332. At that stage of the proceedings the trial court does not concern itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence."

6. However, it is trite that, where the court is not acquitting the accused person at the close of prosecutions' case, there is no need for a reasoned ruling for a case to answer. Reasons should only be given where the submissions of a no case to answer by the accused are upheld and the accused is to be acquitted. The dangers in making definitive findings while determining on a no case to answer was appreciated by Trevelyan and Chesoni, JJ in *Festo Wandera Mukando vs The Republic* [1980] KLR 103 where the learned justices 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."

7. I have considered the evidence tendered by the prosecution in support of its case. From the entirety of the said evidence more particularly the testimony of pw1, it is my finding that the prosecution has made up a prima facie case against the accused person thus requiring him to be placed on his defence so as to rebut the same. The accused person therefore has a case to answer and is consequently placed on his defence.

8. Accused is at liberty under Section 211 of the *CPC* to choose whether to give sworn testimony in which case he will be subjected to cross examination by the prosecution or unsworn testimony whereby he will not be subjected to cross examination. Lastly, he can elect to keep quiet. In either option, he shall be at liberty to call witnesses if any.

Dated, signed and delivered in open court at Garissa this 22nd day of May 2024

J. N. ONYIEGO

JUDGE