Republic v Kamau (Criminal Case 89 of 2014) [2024] KEHC 8843 (KLR) (19 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8843 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL CASE 89 OF 2014

JRA WANANDA, J

JULY 19, 2024

BETWEEN

REPUBLIC ..... PROSECUTION

AND

SIMON SAMORA KAMAU ..... ACCUSED

RULING

1. 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 10/12/2014 at Mwanzo estate in Eldoret West District within Uasin Gishu County.

2. The Accused is represented by Mr. Mwaka, Advocate. He was arraigned on 18/12/2014 and took plea on 31/12/2014 before Hon. Githua J. He pleaded not guilty and was granted bond. The matter then proceeded to trial in which the prosecution called 6 witnesses before closing its case on 13/07/2022.

3. The evidence of the first 5 witnesses was taken before Hon. Sewe J and that of the 6th witness was taken before Hon. Ogola J. By the time that I took over the conduct of the case on 15/02/2023 therefore, the Prosecution had already closed its case. As the matter was part-heard therefore, the parties requested, and I agreed, to proceed with the matter from where it had stopped. Accordingly, the provisions of Section 200(1) of the *Criminal Procedure Code* were complied with and the Defence informed the Court that it would not seek recall of any of the witness for examination. Upon the Court's directions, the proceedings were typed to enable the Court "write" and deliver this Ruling.

Prosecution evidence

4. PW1 was Sarah Wanyoike. She stated that the deceased was her nephew, that on 10/12/2014 at about 3.00 pm, she received a telephone call at about 3 pm informing her that the deceased had been stabbed, and that she rushed to the scene where she found the deceased lying on the road with a stab wound on his chest. She testified further that they rushed the deceased to hospital but he was pronounced dead on arrival, and that they then went to the police station to report the incident. She added that they

found the accused at the station and many other people who were stating that the deceased had been stabbed by the accused.

5. PW2 was Martin Chahazi Arusei. He stated that on 10/12/2014, he was with the accused and the deceased and they had been drinking alcohol, that the deceased and the accused left together but later the deceased returned and asked PW2 to take him to the accused's house, that PW2 showed the deceased the accused's house and left. He stated that he later heard that the accused had stabbed by the deceased with a knife, that he went to the scene where he found the deceased bleeding from a stab wound on the chest and that the accused had locked himself in his house. He stated that the deceased was rushed to hospital and that he later learnt that the accused had been arrested.

6. PW3 was Antipas Njuguna Njenga. He stated that on 10/12/2014 at around 3 pm, he was in his house when he heard somebody banging on the outer door, when she opened, she found that it was a girl whom he did not know, that when he inquired, the girl told him that her boyfriend was quarrelling with some people over money. PW3 stated that he then opened the gate and found 4 very drunk people in an altercation, that among them, he identified the accused as he was his immediate neighbour and whom 2 others were holding by the hands. He stated that when he intervened, the 2 let go of the accused but then the accused stabbed 1 of them and who fell down. He added that an unruly mob gathered upon which he retreated back into the compound and locked the gate but the mob broke down the gate and started destroying the doors and windows in the building. He stated further that the police came and that he also learnt that the deceased had died. In cross-examination, he stated that the 4 people had been drinking in the accused's house before they began quarrelling. He also stated that the accused had blood all over him and it appeared that his chest and forehead had been cut with a razor, and that things happened so fast and he did not see the weapon that the accused used to stab the deceased and that one of the 3 people had a knife. He testified further that after stabbing the deceased, the accused locked himself in his house until the police came.

7. PW4 was Darling Wanyoike. He stated that on 10/11/2014, he was on the road in a group which comprised the deceased and 2 others when one of them told the deceased that his friends wanted to talk to him, that the deceased then went to look for the people who had asked for him and that they followed the deceased. He stated that when they reached the gate of the compound, a young man stabbed the deceased with a knife, that he (PW4) too, was scratched by the knife, that the deceased collapsed and he was rushed to hospital. He stated that he did not see and could not identify the person who stabbed the deceased. In cross-examination, he stated that the person who stabbed the deceased came out of the compound but he did not see the knife. He also denied that the deceased, or all of them, had attacked the person who stabbed the deceased.

8. PW5 was Dr. Macharia Benson, a pathologist. He referred to the post-mortem Form relating to the deceased and prepared by a colleague of his who had since been transferred. He stated that the autopsy was performed on 15/12/2014, that the body had stab wounds on both sides of the chest, that the left stab wound penetrated the chest causing laceration on the ventricle of the heart and that there was accumulation of blood in the left chest cavity. He stated further that the opinion formed was that the cause of death was bleeding due to the stab wounds on the chest.

9. PW6 was Police Constable (PC) Laban Ronoh, the Investigating Officer in this matter. He stated that on 10/12/2024 he received information that there was a fight at Mwanzo area and which information was reported by the Landlord of the building in which the incident had occurred and that he proceeded to the scene together with other officers. He stated that when they reached the scene, they found the accused there, and that he (PW6) interviewed witnesses. He also stated that he later conducted investigations which revealed that the deceased was stabbed by the accused. In cross-examination, he

stated that the Report he received was that 2 people were fighting and that at the scene, the accused had locked himself in his house as a hostile crowd outside wanted to lynch him.

Submissions

10. After close of the Prosecution case, the parties were given liberty to file Submissions on the issue of "case to answer". Pursuant thereto, Senior Prosecution Counsel, Ms Okok, appearing for the State filed her Submissions 12/06/2023. I have not come across any Submissions filed by the Defence.

11. Ms. Okok, basically, submitted that the death of the deceased is not disputed and that the cause thereof was proved by way of medical evidence. She also submitted that the accused was placed at the scene of crim by witnesses and that the evidence against him is direct as PW3 saw the accused stabbing the deceased twice. She added that malice aforethought is also evidenced by the fact that by stabbing the deceased, the accused intended to cause grievous harm to the deceased and that it is those injuries that led to the death.

Determination

12. Under Section 306 of the *Criminal Procedure Code*, this Court is obligated, upon close of the prosecution's case, to give a Ruling on whether the Accused has a case to answer. Section 306(1) and (2) provide 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 recording 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 on his own behalf or make unsworn statement and to call witnesses in his defence ....."

13. At this juncture, what this Court is called upon is to determine whether, at this stage, based on the evidence adduced by the 6 witnesses, the Prosecution has established a prima facie case to warrant the Accused to be placed on his defence to answer to the charge of murder.

14. Needless to state, the burden of proof to establish the case against the Accused lies on the Prosecution throughout the trial. At no point does that burden shift to the Accused reason being that an Accused person's constitutionally guaranteed rights include the right to remain silent, the right to adduce and challenge evidence and the right not to give any incriminating evidence. However, at this stage, the prosecution is not expected to have proved the case beyond reasonable doubt. The measure is for a prima facie case to be established.

15. A prima facie case is established where the evidence tendered by the Prosecution is sufficient on its own for a Court of law to return a guilty verdict even if the Accused opts to remain silent. Hon. Lady

Justice S.N. Mutuku in the case of *Republic vs Abdi Ibrahim Owi* [2013] eKLR, defined a prima facie case as follows:

> " 'Prima facie' is a Latin word defined by *Black's Law Dictionary* 8th Edition as, "sufficient to establish a fact or raise presumption unless disapproved or rebutted". 'Prima facie' is defined by the same dictionary as "the establishment of a legally required rebuttable presumption."

16. "Prima facie" therefore means the establishment of a rebuttable presumption that an Accused person is guilty of the offence he/she is charged with. In *Ramanlal Trambaklal Bhatt vs R* [1957] E.A 332 at 335, the Court stated 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 true, as Wilson, J., said, that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. 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."

17. The question that this Court has to deal with and answer at this stage is therefore, whether based on the evidence before it, the Court, after properly directing its mind to the law and evidence may, as opposed to will, convict if the accused chose to give no evidence. Limo J, in the case of *Ronald Nyaga Kiura Vs. Republic* (2018) eKLR, stated as follows:

> " 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 case 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 Bhatt 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."

18. Trevelyan J, in *Festo Wandera Mukando vs Republic* [1980] KLR 103, Court held:

> " ... we 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, and an extreme case, may require an appellate court to set aside an otherwise sound judgment. Where a submission of "no case" to answer 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."

19. In this case, I have considered the evidence on record, the testimonies of the witnesses as set out above and also the Submissions filed. Without delving into the merits thereof, I only state my finding to be that the prosecution has established a prima facie case. Accordingly, I find that the accused has a case to answer.

20. Pursuant to my finding 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 also informed and it is explained to him that he has a right to address the Court either personally or through his Advocate and to give evidence on his own behalf or to give unsworn statements, and to call witnesses in his defence.

21. The accused is therefore placed on his defence.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 19TH DAY OF JULY 2024

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WANANDA J.R. ANURO

JUDGE

Delivered in the presence of: