Republic v Nyaga (Criminal Case 24 of 2019) [2024] KEHC 8848 (KLR) (18 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8848 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

CRIMINAL CASE 24 OF 2019

LM NJUGUNA, J

JULY 18, 2024

BETWEEN

REPUBLIC ..... PROSECUTION

AND

JOSEPH FUNDI NYAGA ..... ACCUSED

RULING

1. The accused faces the charge of murder contrary to Section 203 as read together with Section 204 of the *Penal Code*. Particulars of the charge are that on 14th day of November, 2019 at Nyanjas Bar in Muchonoke Shopping Centre in Mbeere North Sub County within Embu County murdered James Mugo Kivivu.

2. The accused took a plea of not guilty and the same was duly entered. The case proceeded to trial and the prosecution called eleven (11) witnesses and then rested their case.

3. This court is tasked under Section 306 of the *Criminal Procedure Code*, with making a ruling on whether or not the accused person has a case to answer and whether the prosecution has established a *prima facie* case. The provision states:

    Section 306 (1) of the *Criminal Procedure Code*:

    > "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 the several or any one of the 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."

4. The court in the case of *Republic v 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."

5. In other words, a *prima facie* case is a rebuttable presumption that the accused person is guilty of the offence. This is the position held at Section 211 of the *Criminal Procedure Code*. Further, in the case of *Ramanlal Trambaklal Bhatt v 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'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.....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".

6. Nevertheless, where the court is not acquitting the accused person, there is no need to give a deep reasoning in a ruling for case to answer. The case would have been otherwise where there was a submission on 'no case to answer' as the court would have been required to give its reasons for considering that the accused has no case to answer.

7. I have considered the evidence by the prosecution in its entirety and it is my considered view that a *prima facie* case has been established. The accused person has a case to answer and is therefore put to his defense.

8. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 18TH DAY OF JULY, 2024.

L. NJUGUNA

JUDGE

..... for the State

..... for the Accused Person