



**Republic v Huka (Criminal Case E002 of 2021)
[2024] KEHC 11386 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11386 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
CRIMINAL CASE E002 OF 2021**

JN NJAGI, J

SEPTEMBER 20, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

GALM DUB HUKA ACCUSED

RULING

1. The accused herein is facing a charge of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on the 27th February 2021 at 0030 hours at Qilta Korma location in Marsabit Central Sub County within Marsabit county he murdered Bonaya Galgalo Bule (herein referred to as the deceased).
2. The case for the prosecution is that on the evening of 26th February 2021, one Halake Arero PW6 was holding a wedding ceremony at his home. His brother Wako Arero PW9 was at home. A cow was being slaughtered for the occasion. This was taking place at the cowshed of Wako Arero PW 9. That as this was happening, Wako Arero PW9 heard screams at the place the cow was being slaughtered. He went to check on what was happening. He found the deceased lying on the ground with a knife stuck on his head. He was told by people who were around that it is the accused who had stabbed the person. The accused was within. PW9 went and reported to the area assistant chief PW3. PW3 went to the place and confirmed the report. He called the police. PC Simiyu Elphas PW1 of DCI office Marsabit rushed to the place. He confirmed the report. He arrested the accused person. He took the deceased to Marsabit County Referral Hospital where he was admitted. He took the accused to Marsabit police station and placed him in the cells.
3. Later in the morning PC Kipruto Nyaga PW5 of Marsabit police station went to check on the deceased at the hospital and found him having died. The matter was handed over to the office of the DCI for investigations. It was investigated by PC Duncan Wachira PW7 of DCI, Marsabit. A post mortem was performed on the body by Dr. Tuume PW4 of Marsabit County Referral Hospital after being



- identified by a relative of the deceased, PW2. The doctor found the body with a dagger in situ on the left frontal parietal region. He removed the dagger and handed it over to Pc Wachira. The doctor found the stab wound to be 6cm deep. He formed the opinion that the cause of death was due to haemorrhage in the brain as a result of the stab wound. He completed a post mortem report to that end.
4. During the conduct of the post mortem, PC Abdullahi Jillo PW8 of the Scene of Crime Investigations, Marsabit DCI office took photographs of the body showing the dagger stuck on the head. He later processed the photographs.
 5. After investigations were complete, PC Wachira charged the accused with the offence of murder. During the hearing, the doctor PW4 produced the post mortem report in court as exhibit, P.Exh.1. PC Jillo PW8 produced the photographs as exhibits, P.Exh. 3(a) – (e).
 6. At the close of the prosecution case, this court is now called upon to determine whether the prosecution has established a *prima facie* case against the accused as to warrant him being placed on his defence. Neither the prosecution nor the defence made submissions in the case on whether or not a *prima facie* case had been established against the accused.
 7. In the Black’s Law Dictionary, 10th Edition *prima facie* case is defined as follows:

Prima facie case. (1805) I. The establishment of a legally required rebuttable presumption. 2. party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.
 8. The Court of Appeal in the case of *Ramanlal Trambaklal Bhatt v. R* [1957] E.A 332 at 334 and 335, defined *prima facie* case 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 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.”
 9. Article 50 (2) (i) of *the Constitution* of Kenya provides:
 - (2) Every accused person has the right to a fair trial, which includes the right—
 - (i) i) to remain silent, and not to testify during the proceedings;
 10. The question then is whether the prosecution has at this stage adduced sufficient evidence that requires explanation by the defence.
 11. There is no evidence from the entire proceedings that the accused is the one who stabbed the deceased. None of the witnesses who were present when the cow was being slaughtered came forward to give evidence as to how and who stabbed the deceased. Though Wako Arero PW8 told the court that he was told by people who were around that it is the accused who stabbed the deceased, he never told the court the names of the people who told him so. PC Wachira on his part said that a person called Dakata



Ndatani told him that it is the accused who stabbed the deceased after they fought over a piece of meat. However, that unconfirmed reports indicated the said person passed on in August 2021. The person was therefore not called as a witness in the case.

12. It is then clear that the prosecution did not call any evidence establishing that the accused is the one who stabbed the deceased with a knife thereby causing his death. The evidence adduced before the court cannot lead to the conviction of the accused person if he opted to exercise his constitutional right to silence. I find that the accused has no case to answer and he is accordingly acquitted of the charge under the provisions of section 306(1) of the *Criminal Procedure Code*. I order that the accused be set at liberty forthwith unless lawfully held.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF SEPTEMBER 2024

J. N. NJAGI

JUDGE

In the presence of:

Mr. Magero for prosecution

Mr. Nyenyire for Accused

Accused – present

Court Assistant – Barako

