Republic v Nyawanda (Criminal Case E022 of 2022)
[2023] KEHC 19199 (KLR) (26 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19199 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CRIMINAL CASE E022 OF 2022

RE ABURILI, J

JUNE 26, 2023

BETWEEN

REPUBLIC ..... PROSECUTION

AND

JEFF ONYANGO NYAWANDA ..... ACCUSED

RULING

1. The accused person herein Jeff Onyango Nyawanda is charged with the offence of the murder of none other than his own biological mother. The particulars of the offence are that on the 21st Day of August, 2022 at Nyando Subcounty within Kisumu County, the accused murdered Roseline Atieno Nyawanda.

2. The accused pleaded not Guilty to the charge and the prosecution closed its case after calling ten witnesses in support of the charge.

3. This court is now called upon to determine whether the prosecution has established a prima facie case against the accused person to warrant him being placed on his defence.

4. The burden of proof lies with the prosecution throughout the trial to prove their case against the accused person and that burden does not shift to the accused person except in a few cases as provided for by law such as the cases covered by the doctrine of "last seen".

5. A prima facie case, it has been held severally by courts, is that is not one that must necessarily succeed. A *prima facie* case was defined in *Republic v Abdi Ibrahim Owl* [2013] eKLR as: "Prima facie" is a Latin word defined by *Black's Law Dictionary*, 8th Edition as "Sufficient to establish a fact or raise a presumption unless disproved or rebutted".

6. The same *Black's Law Dictionary* defines "Prima facie case" as "The establishment of a legally required rebuttable presumption."

7. In *Ramanlal Trambaklal Bhatt v R* [1957] EA 332 at 334 and 335, the court expressed itself 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 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."

8. In *Anthony Njue Njeru v Republic* [2006] eKLR, the Court of Appeal stated that:

> " Having expressed himself so conclusively we find it difficult to understand why the Learned Judge found it necessary to put the Appellant on his defence. Was there a Prima facie Case to warrant the trial Court to call upon the Appellant to defend himself? It is a cardinal principle of law that, the onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if at the close of the Prosecution case, the case is merely one, 'Which on full consideration might possibly be thought sufficient to sustain a conviction' Taking into account the evidence on record, what the Learned Judge said in his Ruling on no case to answer, the meaning of a prima facie Case as settled in Bhatt's Case(supra), we are of the view that the Appellant should not have been called upon to defend himself as all the evidence was one record. It seems the Appellant was required to fill in the gaps in the Prosecution case."

9. The question that this court has to deal with and answer at this stage is therefore, whether based on the evidence before this Court, the Court after properly directing its mind to the law and the evidence may, as opposed to, will convict if the accused chose to give no evidence. In *Ronald Nyaga Kiura v Republic* [2018] eKLR the Court stated that:

> " 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 v 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."

10. The Oxford Companion of Law at pg 907 defines a "prima facie" as:

> " A case which is sufficient to all an answer while prima facie evidence which is sufficient to establish a fact in the absence of any evidence to the contrary is not conclusive."

11. There is indeed a danger in making definitive findings at this stage, especially where the Court finds that there is a case to answer and therefore the reasons for not delving deed into the merits of the case are apparent. As appreciated by Trevelyan and Chesoni, JJ in *Festo Wandera Mukando v The Republic* [1980] KLR 103 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."

12. I have considered the evidence adduced by the ten (10) prosecution witnesses against the accused person herein, and the exhibits produced. Briefly, the deceased Roseline Atieno Nyawanda's body was found by her elder son Frank Allan Nyawanda, who testified as PW1, at about 7.00pm on August 21, 2022. It was stacked in the bathroom of her residence at Migingo High School, where she served as the Principal. The body was burnt beyond recognition. The only person who was in that house with her was the accused herein who was her son. The accused was locked up in the house from the inside and after PW1 knocked the door and the accused refused to open, PW1 went to the School where the deceased used to teach to seek help. They tried calling the deceased but her phone could not go through. PW1 returned to the house and saw the accused had now opened the door and was outside. PW1 looked for the deceased in all rooms in the house and traced a burnt body in the bathroom. The accused who was outside the house started walking away and PW1 followed him on a motorcycle and wrestled him to the ground and took him to the nearest police station at Rabour for investigations.

13. From the above evidence of PW1 and other circumstantial evidence on record, I am persuaded that a prima facie case has been established against the accused person to warrant him to be placed on his defence.

14. Accordingly, the accused person herein Jeff Onyango Nyawanda is hereby found to have a case to answer and is placed on his defence for the alleged murder of the deceased Roseline Atieno Nyawanda under section 306(2) of the *Criminal procedure Code*.

15. The provisions of Section 306(2) of the *Criminal Procedure Code* and Article 50(2) (i), (k) and (l) of *the Constitution* are explained to the accused person who is at liberty to consult his advocate on the mode of defence to tender.

16. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 26TH DAY OF JUNE, 2023

R. E. ABURILI

JUDGE