Republic v Ngulat (Criminal Case 31 of 2014)
[2023] KEHC 18489 (KLR) (15 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18489 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL CASE 31 OF 2014

HM NYAGA, J

JUNE 15, 2023

BETWEEN

REPUBLIC ..... PROSECUTION

AND

BENSON CHERUIYOT NGULAT ..... ACCUSED

RULING

1. The accused Benson Cheruiyot Ngulat, was charged with the offence of Murder contrary to section 203 as read section 204 of the *Penal Code*. The Particulars of the offence were that on the Night between 11th and May 12, 2013 at Kiplombe Village in Koibatek District within Baringo County, jointly with others not before court he murdered Mark Kipkorir Changwany.

2. On April 3, 2014, the charge was read to the accused and he pleaded not guilty and thereafter the trial ensued with prosecution calling a total of five (5) witnesses in support of its case.

3. The Prosecution closed its case after PW5 had testified. Upon the close of the prosecution case, none of the parties filed submissions on no case to answer.

Analysis & Determination

4. At this stage the court is to determine whether the prosecution has made out a *prima facie* case to require the accused to be put on his defence.

5. Under section 306(1) of the *Criminal Procedure Code* Cap 75 Laws of Kenya, 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 person committed the offence the court should, 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.

6. Under section 306(2) on the other hand, 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 committed the offence, the court should proceed to put the accused to his defence and inform him of his right to call evidence in support of his case

7. What then is a *prima facie* case? The test of this was settled in the case of *Ramanlal T. Bhatt vs Republic* [1957] E.A. 332 where 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 *Republic vs Abdi Ibrahim Owl* [2013] eKLR a *prima facie* case was defined as follows: -

> "*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". "*prima facie* case" is defined by the same dictionary as "The establishment of a legally required rebuttable presumption". To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with.

9. The court should therefore determine whether based on the evidence placed before it can convict if the accused chose not to give any evidence. It is imperative to note that the proof beyond reasonable doubt is not the standard applicable to the finding of existence of a *prima facie* case for the purpose of a case to answer. In *May vs O'Sullivan* [1955] 92 CLR 654 it was therefore held that:

> "When at the close of the case for the prosecution a submission is made that there is no case to answer, the question to be decided is not whether on the evidence as it stands the defendant ought to be convicted, but whether on the evidence as it stands he could lawfully be convicted. This is a really question of law."

10. There is a danger in making definitive findings at this stage, especially where the Court is of the view that there is a case to answer is not farfetched as was appreciated by Trevelyan and Chesoni, JJ in *Festo Wandera Mukando vs. The Republic* [1980] KLR 103:

> "...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."

11. From the foregoing and without delving into the merits of the prosecution's case it is my opinion that the prosecution has established a *prima facie* case to warrant the accused being put on the defence in terms of section 306 (2) of the *Criminal Procedure Code*.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 15TH DAY OF JUNE, 2023.

H. M. NYAGA

JUDGE

In the presence of;

C/A Jeniffer

State counsel Ms Murunga

Accused present