Republic v Kimutai (Criminal Case 43 of 2017)
[2023] KEHC 17996 (KLR) (2 June 2023) (Ruling)

Neutral citation: [2023] KEHC 17996 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL CASE 43 OF 2017

RN NYAKUNDI, J

JUNE 2, 2023

BETWEEN

REPUBLIC ..... PROSECUTION

AND

ALDFRED KIPRUTO KIMUTAI ..... 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 3rd day of July 2017, at Simatwo village, Kapteren, within Elgeyo Marakwet County, the accused person murdered Abel Kipchirchir.

2. The question that this court has to deal with and answer at this stage is, 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. A case to answer was defined in *Republic vs Joseph Shitandi & Another* (2014) eKLR as follows:-

> "A case to answer is a case where if the accused keeps quiet, the evidence of the prosecution should be such that a conviction will result."

3. In *Ramanlal Trambaklal Bhatt Vs R* [1957] EA 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. Nor can we agree that the question .....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".

4. Under section 306 of the *Criminal Procedure Code* Cap 75 Laws of Kenya, this court has a duty, upon close of the prosecution's case, to make a ruling or a decision on whether an accused person has a case to answer or not. Under section 306(1), 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 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.

5. Having considered the material placed before me I am satisfied that the prosecution has established a *prima facie* case for the purposes of a finding that the accused has a case to answer. As to whether the said evidence on record meet the threshold for convicting the accused is a matter that will have to be considered at the end of the trial.

   I accordingly place the accused on his defence.

DELIVERED VIA E-MAIL DATED AND SIGNED AT ELDORET ON THIS 2ND DAY OF JUNE 2023

.....

R. NYAKUNDI

JUDGE