Republic v Owino (Criminal Case E012 of 2023)
[2024] KEHC 12878 (KLR) (25 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12878 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT SIAYA

CRIMINAL CASE E012 OF 2023

DK KEMEI, J

OCTOBER 25, 2024

BETWEEN

REPUBLIC ..... PROSECUTION

AND

FELIX CHARLES OWINO ..... ACCUSED

RULING

1. The accused herein, Felix Charles Owino is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge read that on 17/4/2022 at Simur sub-location in Ugunja Sub County within Siaya County, he murdered Rayden Ooko. The prosecution has closed its case having called a total of six witnesses. This case therefore comes up for a determination on whether the prosecution has managed to establish a prima facie case against the accused so as to enable him to be put on his own defence.

2. The standard applicable in determining whether or not a prima facie case has been established is well settled in the case of RAMNALAL TRAMBAKLALA BHATT -VS- R (1957) EA 332, in which the court of Appeal observed in part:

> "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 court, properly directing its mind to law and the evidence could convict if no explanation is offered by the defence."

3. I have in this case considered the evidence of the six prosecution witnesses wholly. I have also considered the submissions filed herein by both the prosecution and the defence sides. I am convinced that a prim facie case has been established by the prosecution against the accused. I accordingly therefore find that the accused has a case to answer and put him to his own defence. In the case of FESTO WANDERA MUKANDA -VS- R (1980) KLR 103, the Court of Appeal, giving directions on whether a court

deciding on whether a prima facie case has been established is obligated to give reasons for such determination, held in part:

> " ...we 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 on extreme case, may require an appellate court to set aside an otherwise sound judgment. Where a submission of no case to answer is rejected, the court 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 court or the counts concerned."

4. The totality of the evidence of the six witnesses has clearly placed the accused at the scene of crime thereby warranting him to render an account of how the deceased met his death. Being guided by the authority in Bhatt Vs R [1957] EA 332 (supra), it follows that were the defence to elect to remain silent in defence, then the evidence so far tendered would be sufficient to sustain a conviction against the accused.

5. In the result, it is my finding that the prosecution has made out a prima facie case against the accused herein to warrant him being placed on his defence. Consequently, I find that the accused herein Felix Charles Owino has a case to answer and is now called upon to elect to conduct his defence in line with the provisions of Section 306(2) of the Criminal Procedure Code.

   Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 25TH DAY OF OCTOBER, 2024.

D. KEMEI

JUDGE