Republic v Bett (Criminal Case E041 of 2016)
[2024] KEHC 14296 (KLR) (15 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14296 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL CASE E041 OF 2016

RN NYAKUNDI, J

NOVEMBER 15, 2024

BETWEEN

REPUBLIC ..... PROSECUTION

AND

NICHOLAS KIPLETING BETT ..... ACCUSED

RULING

1. The accused person 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 the 19th May, 2016 at Kithingia shopping centre, Ollainguse location in Wareng district within Uasin Gishu County, murdered Noah Kipkoech Lelei.

2. The accused person was arraigned before this court, pleaded not guilty and therefore giving way for the prosecution to discredit the innocence of the accused person as per the provisions of Art. 50(2)(a) of the *Constitution*. The prosecution was led by Senior Prosecution Counsel Mr. Mark Mugun whereas the accused person was represented by the Learned Counsel Mr. Okara.

3. For the prosecution to discharge the burden of proof of beyond reasonable doubt to disapprove the innocence of the accused person, it relied on the evidence of PW1 Philemon Kiprono. The witness on oath told the court that on 18th May, 2016, he was asleep but soon after he heard lots of noises and screams. He woke up and went towards the direction of the scene when he found one Noah Kipkoech Lelei had been stabbed to death which wounds targeted the neck but the murder weapon was not at the scene. It was a dark night and the deceased was lying was lying on the side of the road and there was nobody around that vicinity. Further PW1 told the court that he made some calls to some family members and the police who joined him at the scene to commence investigations as to what caused the death of the deceased. This evidence was the singular testimony relied upon by the prosecution as they admitted all efforts have been made to trace the witnesses have been unsuccessful.

Determination

4. The provisions of Section 306 of the *Criminal Procedure Code* require that at the close of the prosecution case, the court is required to consider whether there is evidence sufficient enough for the court to make a finding of a prima facie case. If at the close of the prosecution case there is no evidence to link the accused person to the offence charged or any other offence of which he might not be convicted, the court is then at liberty to find a no case to answer and have the accused person discharged of his/her culpability.

5. The test to be applied is in the case of In *Republic v 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. In *Ramanlal TrambakLal Bhatt v R*[1957] EA 332 at 334 and 335, the court stated as follows:
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> "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."

6. At this point in time, the court is only concerned with the question as to whether on a balance of probability the essential elements constituting the offence charge or any other offence has been proved and not whether there is proof beyond reasonable doubt.

7. In *Public Prosecutor v Dato Seri Bin Ibrahim* (No 3) (1999) 2 MLJ 1 at P 63, Augustine Paul J. made the following observations:

> " A Prima facie case arises when the evidence in favor of a party is sufficiently strong for the opposing party to be called on to answer. The evidence adduced must be such that it can be overthrown only by rebutting evidence by the other side. Taken in its totality, the force of the evidence must be such that, if unrebutted, it is sufficient to induce the court to believe in the existence of the facts stated in the charge or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. As this exercise cannot be postponed to the end of the trial, a maximum evaluation of the credibility of witnesses must be done at the close of the case for the prosecution before the court can rule that a prima facie case has been made out in order to call for the defence."

8. The provisions of Section 306 of the *CPC* are instructive and it is incumbent upon the trial court to be conscious of the following guiding principles. It was in the case of *May v O'Sullivan* (1955) 92 CLR 654 where the court remarked that:

> " When, at the close of the case of 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 really a question of law."
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> Moreover, the "question whether there is a case to answer, arising as it does at the end of the prosecution's evidence in chief, is simply the question of law whether the defendant could lawfully be convicted on the evidence as it stands, whether that is to say, there is with respect to every element of the offence some evidence, which, if accepted, would either prove the element directly or enable its existence to be inferred. That is a question to be carefully distinguished from the question of fact for ultimate decision, namely every element of the offence is established to the satisfaction of the tribunal of fact beyond reasonable doubt."
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> Simply stated the test is whether there is evidence capable of proving each of the elements of the offence beyond reasonable doubt."

9. In terms of emphasis, in the case of *DPP v Selena Varlack*, privy Council Appeal No. 23 of 2007 Lord Carswell said

> " The basic rule in deciding on a submission of no case at the end of the evidence adduced by the prosecution is that the judge should not withdraw the case if a reasonable jury properly directed could on that evidence find the charge in question proved beyond reasonable doubt. The canonical statement of the law, as quoted above is to be found in the judgment of Lord Lane CJ in *R v Galbraith* (1981) 2 ALL ER 1060, (1981) 1WLR 1039, 1042. That decision concerned the weight which could properly be attached to testimony relied upon by the Crown as implicating the defendant, but the underlying principle, that the assessment of the strength of the evidence should be left to the jury rather than being undertaken by the judge, is equally applicable in cases such as the present, concerned with the drawing of inference."

10. The particulars of the charge of murder as alleged in the information lays the burden of proof upon the prosecution to proof the following elements:

    a. Whether the deceased is dead

    b. Whether his death arises from the unlawful acts of omission and commission of the accused

    c. Whether the executed murder was actuated with malice aforethought as defined in section 206 of the *Penal Code*.

    d. That the accused person before court committed the unlawful killing of a human being with malice aforethought.

11. At the close of the prosecution case, there is no evidence to warrant this court to place the accused person on his defence as provided for under Section 306 of the *Criminal Procedure Code*. It is not clear how the deceased met his death and it is even impossible to make any findings to the culpability of the accused person. Having made such a finding of a no case to answer by the accused person, this court

is at liberty to end the prosecution case and have the accused person acquitted of all the allegations involving the death of the deceased. He is at liberty unless otherwise lawfully held.

SIGNED, DATED AND DELIVERED AT ELDORET THIS 15TH DAY OF NOVEMBER, 2024.

R. NYAKUNDI

JUDGE