



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARSEN

CRIMINAL CASE NO 11 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

STANLEY MURAGE.....1ST ACCUSED

JOEL MWANGI.....2ND ACCUSED

RULING

1. Stanley Murage and Joel Mwangi (1st and 2nd Accused) are jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. They are alleged to have murdered Peter Muiruri alias Bara on 14th March 2016 at Chakamba market Kipini Division in Tana Delta Sub-County within Tana River County.

2. The two Accused took plea on 13th May 2016 and the trial proceeded before Ongeri J who heard 5 witnesses. Thereafter I took over the trial and heard one witness. At the close of the Prosecution case, both the Prosecution and defence counsel told the court that they did not wish to make any submissions.

3. The summary of the Prosecution case as stated in the evidence of 5 witnesses is that the deceased was assaulted by the Accused persons on the allegation that he had stolen a radio. The assault took place at the garage of the 1st Accused. The deceased was later treated in the local health facility in Witu from where he was taken to Mpeketoni Health Centre before being referred to Kenyatta National Hospital. He later succumbed to the injuries while undergoing treatment at the Thika Level 5 Hospital. A post-mortem report (Exhibit 1) was produced in this regard.

4. I have carefully considered the prosecution evidence on record, and as summarized above. In so doing, I have borne in mind the provisions of section 306 of the Criminal Procedure Code and what constitutes a prima facie case.

5. In defining a prima facie case, the Court of Appeal in **Anthony Njue Njeru –vs- Republic (2006) eKLR** cited the case of **Ramanlal Trambaklal Bhatt V R [1957] E.A. 332 at p. 334-335** where the court stated thus:-

“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.”

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

6. I have also borne in mind that when making a finding on a prima facie case, a trial court is not expected to render a detailed analysis of the evidence unless the ruling leads to an acquittal. It is also important not to analyse the evidence if the Accused will be put on his defence as such detailed analysis may compromise the evidentiary quality of the defence to be mounted. See **Republic V Samuel Karanja Kiria Cr. Case No.13 of 2004 Nairobi [2009] eKLR.**

7. I have carefully considered all the evidence on record and the respective submissions of the parties. It is my finding that the prosecution has discharged the burden of establishing a prima facie case against each Accused. Each Accused shall therefore make his defence in accordance with section 306 of the Criminal Procedure Code.

8. Orders accordingly.

Ruling delivered, dated and signed this 14th day of April, 2021.

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R. LAGAT KORIR

JUDGE

Ruling delivered in the virtual presence of the Accused, Defence Counsel Mr. Omwancha, Mr. J. Mwangi for the DPP, and Kiprotich (Court Assistant).