REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL CASE NO. 16 OF 2014 (MURDER)

REPUBLIC.....PROSECUTOR

VERSUS

GG.....ACCUSED

R U L I N G

1. The accused person GG is charged with the offence of murder contrry to Section 203 s red with Section 204 of the Penal Code vide information filed in court on 21/7/2014. It is alleged that on 2/7/2014 in Thiba Location within Kirinyaga County unlawfully murdered Dennis Ndirangu.

2. Before the accused was formally charged, the court ordered that he be examined by a psychiatrist. He was examined by Dr. Thuo, a consultant psychiatrist who concluded that the accused had a mental illness and required to be treated at a maximum security hospital (Mathari).

3. The accused was committed to Mathare Hospital where he was treated and declared fit to stand trial. He was presented before court on 6/5/2015 and formally charged. He pleaded not guilty. The prosecution proceeded and called five witnesses in support of their case. This is a ruling as to whether the accused should be called upon to give his defence.

4. At the close of the prosecution case, the counsel for the Accused Ms Waweru, submitted that the 1st witness gave hearsay evidence. She further submitted PW3- gave self -contradictory evidence which was not corroborated. That there was no evidence on how the offence was committed. She prays that the accused be acquitted.

5. I have considered all the evidence tendered by the prosecution and the submissions by the defence counsel at the close of the prosecution case. The law is well settled by a line of authorities as to what constitutes a prima facie case. The leading authority is the case of ***Ramanlal T. Bhatt -v- Republic (1957) E.A 332***, where the Court stated:

> ***"A mere scintilla of evidence can never be enough, nor can any amount of worthless discredited evidence. It is true as Wilson J said, that the court is not required at that stage to decide finally whether the evidence is worthy of credit or whether if belief it is weighty enough to prove the case conclusively, that final determination can only be properly made when the case for the defence has been heard. It may not be easy to define what is meant by a prima "facie case," but 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. The court is therefore supposed to consider whether the evidence is weighty and whether it is sufficient to base a conviction if the accused opts to keep quiet if so, it passes the test of a prima facie case. In so doing, the court is not supposed to determine the guilty of an accused as that would amount to determining the case without giving him an opportunity to be heard. The duty of the court at this stage is to determine whether there is enough material which tends to connect him to the allegations that he committed the murder. In ***Republic -v- Samuel Karanja Kiria (2009) eKLR Justice J.B Ojwang*** (as he then was) stated:-

> ***" The question at this stage is not whether or not the accused is guilty as charged but whether***

there is cogent evidence of his connection with the circumstances in which killing of deceased occurred. That the concept of prima facie case dictates as a matter of law that an opportunity created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled…….. The Court of Appeal is Criminal Appeal No. 77/2006 expressed that too detailed analysis of evidence stage at no case to answer stage is undesirable it the court is going to put accused on his defence as too much details in the trial court's ruling could then compromise the evidentiary quality of the defence to be mounted."

7. This I agree is what the court has to consider and what the ruling at this stage of the proceedings entails. The detailed reasons for the ruling need not be given if the ruling will result in calling the accused to give his defence. It is enough to inform the accused person that there is sufficient evidence which is the prima facie case to warrant him to be called u0on to give his defence. **Section 306(2) of the criminal Procedure Code provides:**

" When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact."

8. In this case, the evidence adduced by the prosecution is sufficient and has established a *prima facie* case to warrant the accused to be put on his defence as charged. The accused will proceed as provided under **Section 306 (2) Criminal Procedure Code** (supra).

DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 8TH DAY OF JUNE 2021.

L.W. GITA/RI

JUDGE