



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CRIMINAL CASE NO. 2 OF 2014 (MURDER)**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**STEPHEN CHOMBA KAMAU.....ACCUSED**

**R U L I N G**

1. The accused person **Stephene Chomba Kamau** is charged with murder contrary to **Section 203** as read with **Section 204 of the Penal Code** vide information dated 16/1/2014 and filed on the same date. The particulars of the charge are that on 1/1/2014 at Kaaraini village within Kirinyaga County. The accused unlawfully murdered one Simon Macharia Kamau. The accused was arraigned in court on 31/1/2014 when the charge was read to him and he pleaded not guilty.

2. The matter was set down for hearing and the prosecution called nine witnesses in efforts to prove the charge against the accused. What is now pending before me is a ruling as to whether the accused has a case to answer. At the close of the prosecution case the parties did not make submissions. I will therefore rely entirely on the evidence tendered to determine whether the accused has a case to answer.

Under **Section 306(2) of the Criminal Procedure Code** it is provided.

*“ 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.”*

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.”*

3. 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 in Criminal Appeal No. 77/2006 expressed that too detailed analysis of evidence stage at no case to answer stage is undesirable if 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.”*

4. 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 upon to give his defence.

5. 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 AT CHUKA THIS 8<sup>TH</sup> DAY OF JUNE 2021.**

**L.W. GITARI**

**JUDGE**

**8/6/2021**

Ruling has been read out at Chuka, the accused at G.K. Prison, counsel present through virtually.

**L. W. GITARI**

**JUDGE**

**8/6/2021**