

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 68 OF 2015

REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS

VERSUS

ANTHONY KHAMADI.....1ST ACCUSED

WYCLIFFE ALOSA.....2ND ACCUSED

RULING

1. On 15th March 2021, the prosecution closed its case. The defence indicated that it would file written submissions within 2 weeks. In the end it did not, and it invited the court, on 2nd June 2021, to rule on a no case to answer, based on the material on record. To that end, I have gone through the record, to assess whether or not the prosecution has established a *prima facie* case, sufficient to have accused person put on his defence.

2. I have gotten guidance from *Ramanlal Trambaklal Bhatt vs. R* (1957) EA 332 (Sir Newham Worley P, Sir Ronald Sinclair VP and Bacon JA), where the court described a *prima facie* case as one in which a reasonable court, properly directing its mind to the law and the evidence, could convict, if no explanation was offered by the defence. See also *Director of Public Prosecutions vs. Geoffrey Mukonza Mwangangi* [2018] eKLR (Ngenye-Macharia J) and *Frankline Muthoka Mumo vs. Republic* [2019] eKLR (Odunga J).

3. I have read through the testimonies of PW1, PW2, PW3, PW4 and PW5, and I am persuaded that the prosecution has adduced evidence which establishes a *prima facie* case against the accused persons, and I hereby find that the accused have a case to answer, and I shall, accordingly, put them on their defence.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 17TH DAY OF SEPTEMBER, 2021

W MUSYOKA

JUDGE