REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 18 OF 2017

REPUBLIC.....STATE

VERSUS

WYCLIFFE ODUNDO NYAMWANGE.....ACCUSED

RULING ON NO CASE TO ANSWER

1. The Accused Person, Wycliffe Odundo Nyamwange, is charged with murder contrary to Section 203 as read together with Section 204 of the Penal Code. The particulars are that on the 24th day of February, 2017 at Sitima Line, Rhonda Estate in Nakuru West Sub-County within Nakuru County, it is alleged that he murdered Enock Obwogi Nyamari ("Deceased").

2. The Prosecution called eight witnesses to prove its case against the Accused Person. The Accused Person was a brother in law to the Deceased. The general theory of the Prosecution is that the Accused Person quarreled with his wife and the Deceased. The quarrel escalated between the Accused Person and the Deceased. When it became physical, the Prosecution alleges that the Accused Person stabbed the Deceased to death.

3. At this point in the proceedings, I am required to make a determination whether the Accused Person should be put on her defence. The test to be used at this point in the trial is the test for *prima facie* case long ago established in the celebrated case, ***Bhatt –vs- R [1957] EA 332***. It was held in that case that a *prima facie* case is not 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.

4. So, to paraphrase the authorities, a *prima facie* case is defined in the negative: A *prima facie* case is not established if at the end of the Prosecution case there is no evidence upon which, if the evidence, taken at its highest, is accepted, a reasonable court could convict. (See ***R v Galbraith 73 Cr. App. R. 124***).

5. At this point in the case, it would be improper to assess the strength or weakness of the prosecution evidence by taking a view of the witness reliability unless I came to the conclusion that the state of the evidence called by the Prosecution, taken as a whole, is so unsatisfactory, contradictory, or so transparently unreliable that no court, properly directing its mind, could properly convict on the evidence. In my view, this forbiddingly high threshold is not satisfied here, since there is some evidence which, if accepted and "taken at its highest", would entitle the Court to convict. At this point, the less I say, the better.

6. ***The Accused Person is, consequently, found to have a case to answer and is put on his defence***.

DATED AND DELIVERED AT NAKURU THIS 14TH DAY OF OCTOBER, 2021.

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JOEL NGUGI

JUDGE

NOTE: This judgment was delivered by video-conference pursuant to various Practice Directives by the Honourable Chief Justice authorizing the appropriate use of technology to conduct proceedings and deliver judgments in response to the COVID-19 Pandemic.