



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CRIMINAL CASE NO. 11 OF 2020 (MURDER)

REPUBLIC.....PROSECUTOR

VERSUS

PHARES MUTEMBEI MIRITI.....1ST ACCUSED

BENJAMIN MURANGIRI MUTEMBEI.....2ND ACCUSED

RULING

1. The accused persons herein, Phares Mutembei Miriti and Benjamin Murangiri Mutembei are charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** vide Information filed in court on 18th June 2020. It is alleged that on 9th May 2020 at Kimuri Village, Iriga Location, Maara Sub-County, within Tharaka Nithi County, jointly and unlawfully murdered Shafii Omar.

2. The accused persons were examined by a psychiatrist, and they were both found fit to stand trial. They both pleaded not guilty to the charge and the prosecution proceeded to call a total of nine (9) witnesses in support of its case against them. The prosecution then closed its case on 21st October 2021.

3. This ruling seeks to determine whether or not the prosecution has made out a *prima facie* case against the accused persons that would warrant this court to call upon the said accused persons to give their defence. In other words, whether the accused persons have a case to answer.

4. 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 expressed itself as follows:

“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.” This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence”. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence...It is 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.”

5. Therefore, the question that this court has to deal with and answer at this stage is whether based on the evidence presented, the Court after properly directing its mind to the law and the evidence could convict the accused persons if they chose not to give any evidence. In so doing, this court is not supposed to determine the guilt of the accused persons as that would amount to determining the case without giving them an opportunity to be heard. The court’s duty at this stage is only to determine whether there is enough evidential material which connects the accused persons to the allegation that they committed the alleged murder. In **Republic -v- Samuel Karanja Kiria [2009] eKLR**, Justice J. B. Ojwang (as he then was) stated as follows:

“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 at stage of 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.”

The court will avoid giving a detailed ruling as to why it finds that the accused have a case to answer which may tend to show that the court

has made up its mind without giving them an opportunity to be heard on their defence to the allegation.

6. Trevelyan and Chesoni, JJ in Festo Wandera Mukando vs. The Republic [1980] KLR 103 appreciated the fact that reasons for a finding that a *prima facie* case has been established need not be given at this stage. The court stated as follows:

“...we once more draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgement. Where a submission of “no case” is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the count or counts concerned.”

7. No submissions were made by the accused at the close of the prosecution case. In this case, the prosecution has submitted evidence of several eyewitnesses linking the accused persons to the injuries leading to the death of the deceased. I agree that there is a danger in making definitive findings or giving detailed reasons at this stage and as such I hold the view that the evidence adduced by the prosecution in this case is sufficient and has established a *prima facie* case to warrant the accused persons to be put on their defence as charged.

In conclusion:

I find that the accused have a case to answer and will proceed as provided under **Section 306 of the Criminal procedure Code, (Cap 75 Laws of Kenya)**

- (a) The accused have a right to address the court in their defence, personally or through an advocate.
- (b) They are at liberty to give a sworn or unsworn evidence.
- (c) They have a right to call witnesses
- (d) They have a right to remain silent as provided under **Article 50 (2)i) of the Constitution of Kenya.**
- (e) If they opt to give evidence on oath, they are cautioned that they will be cross-examined by the prosecution.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 18TH DAY OF NOVEMBER 2021.

L.W. GITARI

JUDGE