

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

HCR MURDER NO. 7 OF 2015

REPUBLIC.....PROSECUTOR

V E R S U S

HARRISON KINYUA MAGU.....ACCUSED

RULING

1. The accused person James Harrison KinyuaMagu in charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged that on 23/3/2015 at Karia Shopping Centre within Kirinyaga County, jointly with others not before court, unlawfully murdered Josphat Mati Wamutu.

The accused person denied the charge.

2. The prosecution called Nine (9) witnesses in attempt to prove the charges against the accused. This is a ruling as to whether the prosecution has made out a prima facie case to warrant the accused person to be put on his defence as charged.

3. The Prosecution though Mr. Geoffrey Obiri Ass. D.P.P submits that the prosecution has placed sufficient evidence before the court to warrant accused to be put on his defence. It is submitted that the prosecution has adduced strong circumstantial evidence which has placed the accused at the scene of murder and proved that there was existence of malice aforethought. For the accused, submissions were filed by Mr. J. Ndana, Advocate for the accused. He submits that there was no evidence which connects the accused to the said crime.

4. I have considered the submissions. It is well settled by a line of authorities as to what constitutes a prima facie case. In the case of **Ramanlal T. Bhatt –v- Republic (1957) E. A 332**, Court of Appeal, it was 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 believed it is weighty enough to prove the case conclusively: that final determination can only properly be 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 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. At this stage the court is not supposed to determine whether the accused is guilty, the consideration is whether there is enough evidence which tends to connect him to the allegation that he murdered the deceased. This is what Justice J. B. Ojwang, as he then was stated in the Case of **Republic –v- Samuel KaranjaKiria (2009) eKLR** where he stated:-

“The question at this stage is not whether or not the accused is guilty as charged but whether there is such cogent evidence of his connection with the circumstances in which the killing of the deceased occurred that the concept of Prima facie case dictates as a matter of law that an opportunity be 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 no case to answer stage is understandable if the court is going to put the 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”.

6. This I agree is what the court has to consider and what the ruling at this stage of the proceedings entails. The court need not give details for the ruling if it is to put the accused on his defence as it may prejudice the accused in his defence and may also amount to condemning the accused without giving him an opportunity to state his side of the story. The court need only inform the accused that he has a case to answer and proceed to hear him if he opts to address the court.

7. Having said that, I have considered the evidence adduced by the prosecution witnesses. I find that there is a prima facie case which has been established to warrant the accused to be put on his defence as charged. The accused will proceed as provided under **Section 306 of the Criminal Procedure Code**.

Dated at Kerugoya this 13th day of February 2020.

L. W. GITARI

JUDGE