REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

HCR MURDER NO. 8 OF 2016

REPUBLIC.....PROSECUTOR

V E R S U S

JAMES CHESIKALI JOHN NATO alias JOSEE/JOSPHAT.....ACCUSED

RULING

1. The accused person James Chesikaki Nato Alias Josee/Josphat in charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged that on 29/4/2016 at Kagio Township the accused unlawfully murdered Rose Wambui.

The accused person denied the charge.

2. The prosecution called Ten witnesses and closed their case. This is a ruling as to whether the accused has a case to answer on the charge.

3. The parties filed written submissions at the close of the prosecution's case. For the prosecution it was submitted that they have established a prima facie case and the court to hold that the accused has a case to answer.

4. On the other, the defence counsel submits that there is no prima facie case and the accused ought to be acquitted.

5. I have considered the evidence tendered by the prosecution and the submissions by the prosecution and the defence. The issue for determination is whether the accused has a case to answer.

6. What constitutes a prima facie case has been settled by authorities by the High Court and the Court of Appeal. As submitted by Mr. Ashimosi the prosecution's counsel, a prima facie case is defined as -

> ***"one that is sufficient to establish a fact or raise a presumption unless disapproved or rebutted: based on what seems to be true on first examination or even though it may later be proved to be untrue. At first, on first appearance but subject to further evidence or information ---"***

Black's Law Dictionary 10th Edition.

7. A prima facie case is one upon which the courts finds that there is a sufficient evidence to call upon the accused to give his side of the story. At this stage all what the court considers is whether there is cogent evidence tendered by the prosecution. In the case of **Ramanlal T. Bhatt –v- Republic (1957) E. A 332** the Court of Appeal stated 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."***

Refer to **R –v- Jagjiwan M. Pater & Others(1) T.T.R (R) 85 and R –v- Wachira (1957) E. A 262.**

8. Having considered the evidence tendered by the prosecution, I find that a prima facie case has been established to warrant the accused to be put on his defence. I need not give details for this finding as such details will prejudice the defence which the accused will give and may also amount making a finding on the evidence without giving him an opportunity to be heard. It is enough to inform the accused the accused that based on the evidence he has a case to answer and he will be given an opportunity to give his side of the story.

9. I therefore hold that the accused has a case to answer and 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