



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**CRIMINAL CASE NO. 20 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**TITUS KIBIWOTT KURGAT.....ACCUSED**

**RULING**

1. The accused person herein, **Titus Kibiwott Kurgat**, was arrested and arraigned before the Court on **27 February 2014**, on allegations that he had committed the offence of murder, thereby contravening the provisions of **Section 203** as read with **Section 204** of the **Penal Code, Chapter 63** of the **Laws of Kenya**. The particulars were that on the **8<sup>th</sup> day of February 2014** at Kaptarakwa Village in Keiyo South District within Elgeyo Marakwet County, he murdered **Gilbert Kipkorir Kurgat**. The accused denied that Charge and in proof thereof the Prosecution called evidence from 5 witnesses in proof of the allegations.

2. As by law required, the Court must pose at this stage of the proceedings and ask itself whether the evidence adduced by the Prosecution establishes a *prima facie* case, before calling upon the accused person to make his defence.

3. As to what amounts to a *prima facie* case, the case of **Ramanlal Trambaklal Bhatt -Vs- Republic [1957] EA 332** is instructive. It was held therein thus:

**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 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.”**

4. What then, is the evidence presented by the Prosecution herein. **PW1, Lydia Cherop Kiptanui**, told the Court that the accused is a brother to the deceased and is therefore her uncle. She stated that there was a circumcision ceremony at their home on the date in question, which was attended by relatives and villagers alike; and that *busaa* was served. The function started at 2.00 p.m. and that she had gone to bed by 11.00 p.m. when she heard some commotion. She went out of the house and found the accused quarreling with the deceased over a missing cellphone battery; that they were separated and that the accused went to his house and returned with a piece of wood with which he hit the deceased on the head. The deceased fell down and was unable to speak thereafter. He was taken to **Kaptarakwa Hospital** and then to **Moi Teaching and Referral Hospital** where he died.

5. **Bernard Kiplagat Kurgat (PW2)**, and **Evans Kipkurui Tanui (PW3)**, who are cousins of **PW1**, confirmed that the deceased was hit in

the manner explained by **PW1** in the course of a fight between the accused and the deceased; and that the deceased immediately slipped into unconsciousness upon being hit by the accused, and later died at **Moi Teaching and Referral Hospital**. As to the cause of death, **Dr. David Chumba (PW4)** testified that he conducted an autopsy on the deceased's body on **24 February 2014**; and that he noted that the skull had a depressed fracture on the frontal part with epidural and subdural haemorrhage. He also noted that there was a linear fracture extending to the base of the skull. He therefore formed the opinion that the cause of death was severe head injuries caused by a blunt object.

6. The evidence so far adduced therefore proves that indeed the deceased died and that his death was attributable to the injuries unlawfully inflicted on him by the accused person after the two picked a quarrel with each other over a missing cellphone battery. I am therefore satisfied that the Prosecution has made out a *prima facie* case against the accused to warrant his being placed on his defence. Accordingly, the accused is hereby placed on his defence pursuant to **Section 306(2)** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya** to answer the charge of murder.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2020**

**OLGA SEWE**

**JUDGE**