



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO 113 OF 2015

REPUBLICRESPONDENT

VERSUS

DAVID MWANGI GITHAMBU.....APPLICANT

RULING

1. The accused **DAVID MWANGI GITHAMBU** was charged with the offence of Murder contrary to **Section 203** as read with **Section 204** of the Penal Code, the particulars of which were that between 29th and 30th day of October, 2013 at Kinoo in Dagoretti in Nairobi County murdered **ERICK GITHAMBU MWANGI**.

2. He pleaded not guilty to the charges and to prove its case against him, the prosecution called and examined a total of ten (10) witnesses. At the close of the prosecution case, both the defence and the prosecution opted not to make any submissions as to whether or not prima facie case had been established, to enable the court put the accused on his defence and left it for the court to make a determination based on evidence on record.

3. At this stage of the proceedings all that the court has to determine is whether the prosecution has established a *prima facie* case to enable the court place the accused person on his defence. *Prima facie* case has been defined in the case of **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC (1957) EA 332** as follows:-

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot argue that a prima facie 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 could 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 argue 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 may not be easy to define what is meant by 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.” (Emphasis added)

4. Justice J.B. Ojwang as he then was in the case of **REPUBLIC v SAMUEL KARANJA KIRIA CR. CASE NO.13 OF 2004 NAIROBI [2009] eKLR** had this to say on *prima facie* case:-

“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 Criminal Appeal No. 77 of 2006, the Court of Appeal expressed that too detailed analysis of evidence, at no case to answer stage is undesirable if the court is going to put the accused onto his defence as too much details in the trial court’s ruling could then compromise the evidentiary quality of the defence to be mounted.” (Emphasis added).

5. With the injunction of Justice Ojwang in mind, and without saying much on the evidence on record so as not to compromise the defence, the accused is likely to offer, if he so wishes and being alive to his Constitutional right under **Article 50(2) (i) and (k)**, have looked at the evidence of **PW2 MARIA WAITHERA WANJIRU** a step mother of the accused and wife of the deceased who put the two of them together on the material night, **PW4 MONICA NJERI MWANGI** on the conduct of the accused leading to his arrest, **PW6 INSP. ALVIA MATARA** who received the accused at Naivasha police station on 30/11/2015 and **PW7 HANNA WANGUI** who corroborated

PW4's evidence on the conduct of the accused and without saying more thereon at the stage, find and hold that the prosecution has established a prima facie case to enable me put the accused on his defence which I hereby do.

6. The accused persons are therefore through their Advocate's advised on their rights and it is now for them to choose how they intend to defend themselves and it is so ordered.

Dated, signed and Delivered at Nairobi this 12th day of February, 2020.

.....

J. WAKIAGA

JUDGE

In the presence of:-

Mr. Okeyo for the State

Ms Ajiambo for the Accused

Accused present

Court assistant- Karwitha