

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL MURDER NO. 3 OF 2012

REPUBLIC.....RESPONDENT

VERSUS

DICKSON MAINA.....ACCUSED

RULING

1. The accused person Dickson Maina is charged with the offence of Murder contrary to **Section 203** as read with **Section 204 of the penal code**. It is alleged that on 27/12/2011 at Kavote, village Guama Sub-location in Kirinyaga East District within Central Province the accused person murdered Lucy Wanyiri Gachoki.

2. The accused person denied the charge. This prompted the prosecution to call Seven witnesses in an attempt to prove the charge against the accused person. This is now a ruling as to whether the prosecution has established a prima facie case to warrant the accused to be put on his defence.

3. I have considered the evidence by the prosecution witnesses. I have considered the submissions by the counsel for the accused Rose Njeru and Mr. Obiri Ass. D.P.P for the State. I find that at this stage the court is not required to go into the details and give reasons for finding that the accused has a case to answer. This is because it would prejudice the defence of the accused. It is sufficient to inform the accused that he will be required to address the court in his defence.

4. Having considered the evidence tendered, the question is whether it meets the test of a prima facie case as laid down in the case of **Ramanlal T. Bhatt –v- R (1957) E. A 332**

It was stated:-

“Remembering that the legal onus is always on the prosecution to prove its case beyond any reasonable doubts, we cannot argue that a prima facie case is merely on which on, full consideration might possibly be thought sufficient to sustain a conviction this 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 urge 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 also 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.”

5. At this stage the court is not dealing with the issue as to whether the accused is guilty or not, the consideration is whether there is enough evidence placed before the court to warrant the accused being asked to give his side of the story. Justice Ojwang (as he then was) in **Republic –v- Samuel Karanja Kiria, (2009) eKLR** stated as follows on the issue of prima facie case –

“The question at this stage is not 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 Cr. Appeal No. 77/2006 expressed that too detailed analysis of the evidence at no case to answer stathe 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 minted.”

6. I am persuaded by the finding by Justice Ojwang (as he then was). The above decisions gives the principles which the court should consider when determining whether there is a case to answer. The court is not required to give a detailed analysis of the evidence at this stage. It is enough to consider the evidence and if it is of the view that there is a prima facie in which case the accused will be called upon to give defence, inform the accused its finding without details or the reasons for the finding. Applying the test in the leading authority in **Bhat-v- R**. I need not consider the reasoning in the detailed submissions by the defence and the state. I find that having considered the evidence by the six witnesses there is a prima facie case established by the prosecution to warrant the accused to be put on his defence as charged.

I order as follows:-

1. The accused has a case to answer.

2. He will be called upon to proceed as provided under Section 306 of C.P.C.

Dated at Kerugoya this 6th day of February 2020.

L. W. GITARI

JUDGE