



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL CASE NO. 24 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

DOREEN WIANGA LUGANDA.....ACCUSED

RULING

1. Doreen Wianga Luganda is charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 5th day of January 2017, at Burinda in Marachi West Location of Butula sub County within Busia County, unlawfully caused the death of James Nyabola.
3. The prosecution put forward three versions of how the accused is said to have killed the deceased. The first version was that the deceased grabbed the gun the accused had and a struggle over it ensued. It was during the struggle that the gun accidentally fired and shot both the accused and the deceased. This was in the evidence of A.P.C. Benard Wesonga (PW1) and A.P.C. Dominic Saruni (PW2) who were in company of the accused.
4. According to the evidence of these two officers, they were responding to a distress call to go and save a life. Some two women had rushed to their post and requested for their intervention.
5. Upon their arrival at the scene which was about 150 meters away, they found a group of boda-boda riders who were arguing. When it was alleged that the deceased had hit a child, the deceased pounced on the accused and there was a struggle before the two were injured by bullets that were accidentally fired.
6. The second version was by Patrick Onyango Osetero (PW4). According to this witness, after the deceased had knocked down a girl who was riding a bicycle, some three Aps went to arrest him but he resisted. This is when PW1 send the accused to go for guns. He said that she returned with two guns. The accused placed the gun on the ribs of the deceased and fired. When the officers were going away and on reaching near a borehole, the accused shot herself in the leg.
7. Godfrey Omondi Otieno (PW5) came with a third version. In his testimony he said that when the deceased resisted arrest, the accused was sent for guns and she returned with two. They started to push the deceased to the AP post. While they were doing so, many boda-boda riders went to the scene. The armed male officer shot in the air and a second gun went off and this is when he saw the deceased lying down. The female officer (the accused) placed her gun down and it was picked by the male officer. This witness gave a different version in his statement. He stated that he saw the accused shoot the deceased while in court he said as he was running away after a shot in the air, when he turned, he saw the deceased lying down.
8. What is a *prima facie* case? In the **Black's Law Dictionary, 10th Edition** it is defined as follows:
Prima facie case. (1805) I. The establishment of a legally required rebuttable presumption. 2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.

9. The Court of appeal in the case of **Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335**, defined *prima facie* case as follows:

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.

10. Article 50 (2) (i) of the Constitution of Kenya provides:

(2) Every accused person has the right to a fair trial, which includes the right—

(i) to remain silent, and not to testify during the proceedings;

In the instant case, if the accused opts to exercise her constitutional right hereinabove stated, I cannot enter a conviction based on the evidence on record. This therefore means that the prosecution has failed to establish a prima facie case against her. I accordingly acquit her of the offence of murder under section 306 (1) of the Criminal Procedure Code.

DELIVERED and SIGNED at BUSIA this 8th day of April, 2020

KIARIE WAWERU KIARIE

JUDGE