



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KABARNET
CRIMINAL CASE NO. 71 OF 2017
(FORMERLY NAKURU HCCRC NO. 13 OF 2015)
REPUBLIC.....PROSECUTOR
VERSUS
VIOLET CHELAGAT ACHIGA
MILLICENT KAGEA MWANGI.....ACCUSED
RULING

1. This is a ruling on the question arising at the *Close of case for the prosecution*, whether, on the evidence presented before the court, there is established a *prima facie* case to warrant the calling of the accused to make their defence. The accused are charged with murder contrary to section 203 as read with 204 of the Penal Code, and the particulars of the Charge are that:

“1. Violet Chelagat Achiga 2. Millicent Kagea Mwangi: on the 21st day of February 2015 at Esageri Centre in Koibatek District within Baringo, jointly murdered Robert Kipkurui Chumba.”

2. Counsel for the Defence, Mr. Mwaita, filed written submissions dated 10th December 2019 urging that the Prosecution had not established to the required standard a *prima facie* case to warrant the calling on the accused to make their defence. The DPP relied on the evidence presented before the court without making any submissions on case to answer.

3. The court has considered the evidence before the court and the submissions on no case to answer made by the counsel for the accused. I agree with the Defence, citing *Ramanlal Trambaklal Bhatt v. R (1957) EA 332*, that the test for *prima facie* case is the existence of such a case “on which a reasonable tribunal, properly directing its mind to the law and evidence could convict if no explanation is offered by the defence.” I also agree with the general proposition of criminal law relied on by the Defence, citing *R. v. Silas Magongo Onzere alias Fredrick Namena (2017) eKLR*, that the burden of proof in criminal cases rests with the prosecution and the accused is under no duty to prove anything.

4. However, having considered the evidence before it, this trial court does not agree that the prosecution has not established a *prima facie* case. The court considers that there is established a *prima facie* case justifying the calling upon the two accused persons to make their defence. The court may not, however, discuss in detail the evidence or its reasons for the finding of a case to answer so as not to prejudice the fair trial of the case: See paragraph 157 at p.100 of the Kenya Judiciary’s *Criminal Procedure Benchbook 2018*, as follows:

“157. If the Court concludes that a *prima facie* case has been made, **it should not give reasons for that finding, because it may appear as if the court has made up its mind even before hearing the defence** (*Eustace Kibera Karimi v. R High Court at Nairobi Criminal Appeal No. 911 of 1978; Festo Wandera Mukando v. R [1980] KLR 103; Anthony Njue Njeru v. R, Court of Appeal at Nairobi No. 77 of 20016*).”

Orders

5. Having found that the prosecution has established a *prima facie case* against the two accused persons to justify the calling upon them to make their defence, the court shall in accordance with section 306 (2) of the Criminal Procedure Code, put the accused on their defence and explain their rights therefor, and subsequently fix a date for the defence hearing, in consultation with the counsel for the accused and counsel for the DPP.

Order accordingly.

DATED AND DELIVERED THIS 6TH DAY OF MAY 2020.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mwaita, instructed by M/S Mwaita & Co. Advocates for the Accused.

Ms. Macharia, Prosecution Counsel for the Respondent.