

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL CASE NO. 8 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

OLOISHIRO OLE KEIWA.....1STACCUSED

KITERENGA KEIWA.....2NDACCUSED

RULING

1. The issue before this court is whether the prosecution has established a *prima facie* against the accused to require him to be put on his defence in terms of section 306 (1) of the Criminal Procedure Code (Cap 75) Laws of Kenya.
2. Mr. Nyaribo, counsel for the 1st accused has submitted that no *prima facie* has been established against the 1st accused. Based on the evidence adduced by the prosecution, counsel submitted that the prosecution has not discharged the burden of proof to enable the court to put the 1st accused on his defence.
3. Mr. Yenko, counsel for the 2nd accused made a similar submission as Mr. Nyaribo, except for the following submissions. He has submitted that the prosecution failed to prove malice aforethought, in respect of which he cited *Bonaya Tutu Ipu & Another v Republic [2015] e-KLR*, amongst other authorities, in support of his submission. He has therefore urged the court to acquit the 2nd accused.
4. Ms Torosi for the prosecution has submitted that a *prima facie* has been made out to warrant both accused to be put on their defence. She cited the case of *Ramanlal Trambaklal Bhatt v. R [1957] EA 332*, in which the Court of Appeal defined a *prima facie* as one in which “**A reasonable tribunal properly directly its mind to the law and the evidence could convict if no explanation is offered by the defence.**”
5. She also cited other cases in respect of circumstantial evidence including *Sawe v. Republic [2003] KLR 364*, among others, and urged the court to put both accused on their defence
6. I have considered the evidence adduced by the prosecution and the authorities cited by both counsel.
7. As a result, I find that a *prima facie* case has been made against both accused.
8. In the premises, I hereby put both accused on their defence.

Ruling signed Judgment signed, dated and delivered at Narok this 14th day of October, 2020 in the presence of both accused persons, Mr. Nyaribo for the 1st accused, Mr. Yenko for the 2nd accused and Ms. Torosi for the state.

J. M. BWONWONG’A.

J U D G E

14/10/2020