



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**CRIMINAL CASE NO. 57 OF 2012**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JANE CHEBET.....ACCUSED**

**RULING**

[1] Before the Court is **Jane Chebet**, who was arraigned before the Court on **25 July 2012** on the Information by the Director of Public Prosecution that she had committed that offence of Murder contrary to **Section 203** as read with **Section 204** of the **Penal Code, Chapter 63** of the **Laws of Kenya**. The allegation against her was that, on the **25<sup>th</sup> day of June 2012** at Kapsesengin Village in Kamobo Location in the Nandi County, she murdered **Simion Kimutai Chepkwony**. The Accused denied that Charge.

[2] At the close of the Prosecution Case on the **21 January 2019**, the Prosecution had called six witnesses, whose evidence was that the deceased and the Accused Person were then cohabiting as husband and wife; and that they had a domestic tiff on the night of **25 June 2012** over some seeds that the deceased had bought and given to the Accused for planting; which work was not well done by the Accused. It was stated that, out of anger, the deceased had then beaten and chased the Accused around while armed with two pangas before retiring to bed. That no sooner had he gone to bed than the grass thatched house in which he was sleeping was set ablaze; thereby occasioning him severe burns from which he succumbed one week later.

[3] According to the evidence adduced by the Prosecution, the Accused was arrested for the murder of her deceased husband by **Benjamin Lulei (PW1)**, the Chief of Kamobo Location, on the grounds that she had the motive to commit the crime on account of their domestic fight with the deceased prior to the incident. It was also stated that the Accused had made known her intention to commit the crime to a neighbour, **Jane Chepng'etich (PW2)** before its occurrence. It was thus on that basis that the Accused was arrested and handed over to **PW6** for further investigations.

[4] On his part, **PW6** told the Court that after interviewing the deceased in hospital before his death, he visited the scene and noted that the deceased's semi-permanent house had been completely burnt down. He thereafter arranged for postmortem to be conducted on the body of the deceased by **Dr. Ismail**. **PW6** produced the Postmortem Form as the **Prosecution's Exhibit No. 1** herein. He similarly produced a piece of burnt timber that he collected from the scene as well as a rough sketch plan he drew at the scene. They were marked **Prosecution's Exhibit 2 and 3**, respectively.

[5] In the light of the foregoing, **Mr. Miyienda**, Learned Counsel for the Accused, urged the Court, in his written submissions filed herein on **14 January 2019**, to acquit the Accused at this stage because no *prima facie* case has been made out against her by the Prosecution. According to him, none of the six Prosecution Witnesses saw the Accused torch or burn the deceased's house; and that since the incident is alleged to have occurred at night there was a possibility that the arson could have been caused by a person other than the Accused, including the deceased. Thus, it was the submission of **Mr. Miyienda** that, given the evidence adduced by the six Prosecution Witnesses, to put the Accused on her defence would be to ask her to fill gaps for the Prosecution. Counsel relied on the case of **Ramanlal Trambaklal Bhatt vs. Republic** in urging the Court to acquit the Accused Person at this stage of the proceedings.

[6] In **Ramanlal Trambaklal Bhatt -Vs- Republic [1957] EA 332** it was held thus:

**Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the 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 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 agree 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 is true, as Wilson, J., said, that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It 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.”

[7] Accordingly, I have given careful consideration to the evidence on record with a view of ascertaining whether it is evidence upon which the Court would be prepared to convict if no explanation is offered by the Accused Person. There is credible evidence that the deceased herein, **Simeon Kimutai Chepkwony** died while undergoing treatment at Kapsabet District Hospital. There is also no dispute that the cause of death of the deceased was multi-organ failure due to the 80% burns that the deceased sustained. It is indubitable that the deceased sustained the burns when his house was set ablaze; a manifestly unlawful act on the part of the perpetrator; and according to the Prosecution that perpetrator is none other than the Accused person. Although nobody saw her set the deceased's house ablaze, there is sufficient circumstantial evidence pointing to her as the culprit.

[8] Accordingly, it is my finding that the Prosecution has established a *prima facie* case against the Accused Person to warrant her being placed on her defence to answer the Charge of Murder. She is accordingly hereby placed on her defence pursuant to **Section 306(2)** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya**.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 6<sup>TH</sup> DAY OF MARCH, 2019**

**OLGA SEWE**

**JUDGE**