



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO. 43 OF 2016

REPUBLICRESPONDENT

VERSUS

REGINA WAMBUI NJOROGEACCUSED

RULING

1. The accused was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**, she pleaded not guilty to the said charges. To prove its case against her, the prosecution called and examined a total of nine (9) witnesses.
2. At the close of the prosecution case both the prosecution and the defence opted not to make any submissions as to whether the prosecution had established *prima facie* case to enable the court put the accused on her defence.
3. At the close of the prosecution case, the court under **Section 306** of the **Criminal Procedure code** is required to make a determination as to whether the prosecution had tendered in any evidence or not to enable it record a finding of not guilty or to put the accused on his/her defence. This is what is legally known as *prima facie* case.
4. At this stage of the proceedings all that the court has to determine is whether the prosecution has established a *prima facie* case to enable the court place the accused person on his defence. *Prima facie* case has been defined in the case of **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC (1957) EA 332** as follows:-

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot argue that a prima facie 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 could 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 argue 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 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.” (Emphasis added)

5. Justice J.B. Ojwang as he then was in the case of **REPUBLIC v SAMUEL KARANJA KIRIA CR. CASE NO.13 OF 2004 NAIROBI [2009] eKLR** had this to say on *prima facie* case:-

“The question at this stage is not whether or not the accused is guilty as charged but 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 Criminal Appeal No. 77 of 2006, the Court of Appeal expressed that too detailed analysis of evidence, at no case to answer stage 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 mounted.” (Emphasis added).

6. With the wise counsel of Justice Ojwang in mind, I have looked at the evidence tendered before me and being alive to the accused’s constitutional right under **Article 50 (2):-**

(a) to be presumed innocent until the contrary is proved,

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

(l) to refuse to give self-incriminating evidence.

7. I have looked at the evidence of **PW4** a sister of the accused, **PW3** who left the accused with the deceased and **PW7 DR. J. ODUOR** on the cause of death and without saying too much on the said evidence so as not to comprise any of the defence the accused person might wish to tender, I find and hold that the prosecution has proved a *prima facie* case against the accused.

8. It is clear to my mind that based upon the evidence on record, if unrebutted, makes a conviction reasonably possible and as stated herein above since at this stage the court should not go into so as not to prejudice, the accused is therefore advised of her constitutional rights under **Article 50 (2)** aforesaid and **Sections 306 to 311** of the **Criminal Procedure Code** and is now called upon to choose how she wishes to defend herself and it is so ordered.

Dated, delivered and signed at Nairobi this 18th day of July, 2019.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Naulikha for the State

Ms. Chepkorir for the accused

Accused present

Court assistant: Karwitha