



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO. 102 OF 2013

REPUBLIC.....RESPONDENT

VERSUS

LEAH IKENYE MUTHONI.....ACCUSED

RULING

1. The accused **LEAH IKENYE MUTHONI** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**, the particulars of which were that on the 6th day of October 2013 at Kinno 87 Ucommon Flats in Dagoretti District within Nairobi County murdered **ADRIAN OCHINGWA KABALA**.

2. She pleaded not guilty to the said charges and to prove its case against her, the prosecution called and examined a total of ten (10) prosecution witnesses. At the close of the prosecution case, it was submitted by Mr. Wandugi on behalf of the accused that the State had failed to prove that the same had malice aforethought, since the evidence tendered showed that the accused had been placed in an extremely difficult position and was extremely provoked by the deceased by committing an affair with **PW4** while living with the accused in house number 3 while **PW4** was living in house number 1 within the same flat on the same floor.

3. It was submitted that it is the action of the deceased which led to the accused to go to house number 1 while unarmed where the deceased was at that time. It was submitted that the incidence though tragic was brought to the accused who was not given any other option and acted at the spur of the moment under extreme provocation.

4. On behalf of the prosecution it was submitted by Mr. Naulikha that they had placed the evidence on how the offence was committed by the accused. It was submitted that no amount of provocation could justify the taking of the human life. It was submitted that the accused was armed and dangerous and therefore demonstrated malice aforethought.

5. 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)

6. 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).

7. With the injunction by Justice Ojwang in mind 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, and **(l)** to refuse to give self-incriminating evidence, and without saying much on the evidence tendered so as not to compromise the defence the accused person might wish to offer, I have looked at the evidence of **PW1** who placed the accused at the scene armed with a knife, saying that she wanted to kill somebody, **PW4** who was with the deceased in her house when the accused came calling, **PW5** the care taker of the said building and **PW6 DR. ODUOR** who conducted post-mortem examination as corroborated by that of **PW10** the Investigating Officer, I have come to the conclusion that a *prima facie* case has been established against the accused, that is to say, that should the same exercise her constitutional right not to offer any explanation, this court properly directing his mind is prepared to convict her on the evidence tendered.

8. The accused is therefore advised on her rights under **Section 306 to 311** of the **Criminal Procedure Code** and is through the advice of her Advocate on record called upon to choose how she intends to defend herself and it is so ordered.

Dated, delivered and signed at Nairobi this 16th day of July, 2019.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Naulikha for the State

Mr. Machina for Wandugi for the accused

Accused present

Court assistant: Karwitha