



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL CASE NO 29 OF 2017**

**REPUBLIC.....RESPONDENT**

**VERSUS**

**PATRICK KIMANTHI MUJIRI.....ACCUSED**

**RULING**

1. The accused 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 6<sup>th</sup> day of June, 2017 at Tea room in Nairobi within Nairobi County, jointly with another not before court murdered **KELVIN KINYUA**.

2. He pleaded not guilty to the said charges and to prove its case against him the prosecution called and examined a total of six (6) witnesses.

**SUBMISSIONS**

3. 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.

4. At this stage of the proceedings all that the court is required to do is not to find whether a case has been proved beyond reasonable doubt but whether there is enough evidence to enable the court call upon the defence to offer some explanation as was stated in the **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC (1957) EA 332** case 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 on record and in particular that of **PW1** who put the accused and the deceased together and **PW4** who confirmed the cause of death and without saying much on the said evidence, find and hold that the prosecution has established *prima facie* case against the Defendant to enable me put him on his defence which I hereby do.

8. The accused is therefore advised of his constitutional rights under **Article 50 (2)** and **Sections 306 to 311** of the **Criminal Procedure Code** and is called upon to choose through the advice of his Advocate on record how she wishes to defend himself.

**Dated, delivered and signed at Nairobi this 19<sup>th</sup> day of September, 2019.**

.....

**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Ms. Gikonyo for the State*

*Mr. Mwangale for the accused*

*Accused present*

*Court assistant: Karwitha*