



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO. 69 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

SAMUEL OCHIENG DADDY.....1ST ACCUSED

GEOFFREY OBWAGE ONDIEKI.....2ND ACCUSED

ASIFU NYAKUNDI ONYAMO.....3RD ACCUSED

COLLINS RAMADHAN ISSA.....4TH ACCUSED

RULING

1. The accused persons were 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 28th day of August 2012 at Kamiti Maximum Prison in Kasarani District within Nairobi County, jointly murdered **FRANCIS NDABI NJOGU**.

2. They all pleaded not guilty and to prove its case against them the prosecution called and examined twelve (12) prosecution witnesses at the end of which the defence filed written submissions while the State opted to go by the evidence on record.

SUBMISSIONS

3. On behalf of the Defendants it was submitted that the prosecution had failed to establish *prima facie* case to enable the court place them on their defence. It was submitted that there was no evidence to show that it was the accused persons who strangled the deceased, rather than that of the inconsistent testimonies of **PW3**, **PW9**, **PW10** and **PW12**. It was further submitted that other than the fact that the accused persons were in the same cell with the deceased, there was no other evidence to substantiate the charge against them and that the circumstantial evidence therein was not good evidence on a charge of murder for which the following cases were submitted in support:-

a. Republic v Charles Kimani Mbugua [2017] eKLR.

b. Peter Mugambi v Republic [2017] eKLR.

4. It was further submitted that the prosecution did not prove that the accused persons had the necessary "*mens rea*" that is, the intention to cause the death of the deceased and it was contended that the only thing that the prosecution successfully established was that the accused persons were not sane people as per the evidence of **PW10**. It was therefore submitted that the accused persons did not have the mind and knowledge of their action for which the case of **EDWARD KAMAU MBURU & 2 OTHERS [2016] eKLR** was submitted in support. It was therefore submitted that the prosecution failed to meet the test set out in **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC (1957) EA 332** as cited in the case of **REPUBLIC v JACKSON MUIMI TUMA [2018] eKLR**.

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. In this cause, with the injunction of Justice Ojwang in mind, I have looked at the evidence of **PW1 SAMMY MUSEMBI MBUGUA** whose work was to listen to any problems between prisoners to forward to the officers and **PW2 RICHARD EVANS WAFULA** who put all the accused persons and the deceased in the same cell as corroborated by **PW3 INSPECTOR MAURICE OKUMU AGINA** and **PW4 CPL. STEPHEN KINYUA MABEYA**. I have further taken note of the evidence of **PW7 TEMESI LEOKO** who heard commotions in the cell occupied by the accused persons and the deceased together with the evidence of **PW12 DR. ODUOR** on the cause of death and without saying much thereon so as not to comprise the defence the accused persons are likely to advance and being alive to their rights under **Article 50 (1) (i) of the Constitution** and **Sections 306 (2) and (3) and Section 311 of the Criminal Procedure Code**, find and hold that the prosecution has established *prima facie* case to enable me put the accused persons on their defence which I hereby do.

8. The accused persons are therefore through their Advocate’s advised on their rights and it is now for them to choose how they intend to defend themselves and it is so ordered.

Dated, signed and delivered at Nairobi this 21st day of November, 2019.

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J. WAKIAGA

JUDGE

In the presence of:-

Ms. Gikonyo for the State

Mr. Katwa holding brief for Mr. Ojienda for the Accused

Accused present

Court assistant- Karwitha