



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

HIGH COURT CRIMINAL CASE NO. 45 OF 2018

(FORMERLY KIAMBU CRIM. CASE NO. 89 OF 2016)

REPUBLIC.....PROSECUTOR

VERSUS

JANE MUTHONI MUCHERU.....1ST ACCUSED

ISAACK NG'ANG'A WAMBUI ALIAS GIKUYU.....2ND ACCUSED

RULING

1. The two Accused Persons, Jane Muthoni Mucheru (1st Accused Person”) and Isaack Ng’ang’a Wambui Alias Gikuyu (2nd Accused Person”), are jointly charged with murder contrary to section 203 as read together with section 204 of the Penal Code. They are accused, together with at least one other of unlawfully, and with premeditation killing Solomon Mbuthi Mwangi (Deceased) between 6th November, 2016 and 11th November, 2016 at Karakuta Coffee Estate in Juja sub-county within Kiambu County.

2. The Prosecution called twenty-one (21) witnesses in its bid to prove its case. The general theory of the case was that the 1st Accused Person (who was the wife of the Deceased) contracted the 2nd Accused Person and another person to kill her husband upon suspicion that the husband was unfaithful. At the conclusion of the Prosecution case, the Defence Counsel indicated that he did not wish to make any submissions on “no case to answer” but would, instead, rely on the Court record. The Republic made submissions urging the Court to make a finding that the Two Accused Persons had a case to answer.

3. The Court’s singular task at this point in the proceedings is to make a determination whether the Accused Persons should be put on their defence. The test to be used at this point in the trial is the test for *prima facie* case long ago established in the celebrated case, ***Bhatt –vs- R [1957] EA 332***. It was held in that case that a *prima facie* case is not 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.

4. So, to paraphrase the authorities, a *prima facie* case is defined in the negative: A *prima facie* case is not established if at the end of the Prosecution case there is no evidence upon which, if the evidence, taken at its highest, is accepted, a reasonable court could convict. (See ***R v Galbraith 73 Cr. App. R. 124***).

5. At this point in the case, it would be improper to assess the strength or weakness of the prosecution evidence by taking a view of the witness reliability unless I came to the conclusion that the state of the evidence called by the Prosecution, taken as a whole, is so unsatisfactory, contradictory, or so transparently unreliable that no court, properly directing its mind, could properly convict on the evidence. In my view, this forbiddingly high threshold is not met here, since there is some evidence which, if accepted and “taken at its highest”, would entitle the Court to convict. At this point, the less I say, the better.

6. ***The upshot is that the Accused Persons are, consequently, found to have a case to answer and are put on their defence.***

7. Orders accordingly.

Dated Nakuru this 8th day of November, 2019.

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JOEL NGUGI

JUDGE

Delivered at Nakuru this 11th day of November, 2019

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J. N. MULWA

JUDGE