

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL MURDER NO. 2 OF 2012

SIMON MUCHIRI GORDONACCUSED

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The accused person Simon Muchiri Gordon is charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. It is alleged that on 8/5/2012 at Kamugunda Village in Thumaita Sub-location of Kirinyaga County he unlawfully murdered Ephantus Munene Ndegwa.
2. The accused person denied the charge. The prosecution called Eight witnesses in efforts to prove the charge against the accused.
3. This is now a ruling as to whether the accused has a case to answer on the charge.

The **Criminal Procedure Code Section 306** provides as follows:

“(1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence, shall after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit recording a finding of not guilty.

“(2) When the evidence of the witnesses for the prosecution has been concluded the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court on his own behalf or make unsworn statement and to call witnesses in his defence.....”

4. What constitutes a prima facie case has been considered in various cases in the High court and in the Court of Appeal. A prima facie has been stated to be one where the court while addressing its mind to the law and the facts could convict if no explanation has been offered by the defence.

Refer to **Republic v Benson Ochieng Oyungi [2016] eKLR**

The Court held;

A definition as to what amounts to a prima facie case was given in the case of Bhatt –vs- R [1957] EA 332. In that case the Court of Appeal expressed itself on this issue:

“Remembering that the legal onus is always on the Prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near to suggesting that the Court would 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 agree 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 is true as Wilson J said that the Court is not required at that stage to decide finally whether the evidence is worthy of credit or whether if believed it is weighty enough to prove the case conclusively: That determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by a “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.”

5. Based on the case of **Bhatt –v- R (1957) EA 322** which is the leading authority on the subject at this stage what the court considers is whether the prosecution has laid enough evidence to warrant the court put the accused on his defence. It is not necessary at this stage to give a reason(s) for the finding as doing so would prejudice the accused and would amount to condemning the accused before the court has heard his side of the story. It is sufficient for the court to consider the evidence and inform the accused that he has a case to answer. This was stated in the case of **Eustace Kibera Karimi –v- R CR. Appeal No. 911/1978, 1980 KLR**. I agree with the holding.

6. After carefully considering the evidence tendered. I find that a prima facie case has been established to warrant the accused to be put on his defence as charged.

Dated at Kerugoya this 5th Day of November 2019.

L. W. GITARI

JUDGE