



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO 43 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JULIUS KARITHI M’MUBWANGA.....ACCUSED

RULING

Case to answer: constitutional foundation

[1] Needless to state that the exercise of establishing whether or not *prima facie* case has been established against an accused person before he is called to enter upon his defence, is not merely a mundane ritual; it is an essential part of criminal trial, for it ensures that no one continues to stand trial unless there is a *prima facie* case established against him at the close of the prosecution case. The requirement is founded upon and guarantees the right to fair trial; and gives effect to the presumption of innocence of the accused at all stages of trial. See section 306 of the Criminal Procedure Code:-

306. (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, record 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, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.

(3) If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon him to enter upon his defence.

Prima facie case

[2] Of what *prima facie* case; we learnt this in early stages of university education. But, as I have stated, the subject is as important today as it ever was in criminal justice. *Prima facie* case is said to be:-

‘...one which a reasonable tribunal properly directing its mind to the law and the evidence would convict if no explanation is offered by the defence’. See *RAMANLAL BHATT vs. R (1957) EA 332(CA)*

[3] Applying the test of the law, and upon consideration of the evidence adduced, I find that there is *prima facie* case established against the accused. Accordingly, the accused is hereby informed of his right to address the court, either personally or by his advocate, to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence. Now the accused or his advocate shall state to the court whether it is intended to call any witnesses other than the accused person himself. It is so ordered.

Dated, signed and delivered in open court at Meru this 6th day of February 2018

F. GIKONYO

JUDGE

In the presence of:

Mrs.Mwathi for State

Mr. Omari advocate for Igweta advocate for the accused.

F. GIKONYO

JUDGE