



REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL CASE NO. 9 OF 2010

REPUBLIC PROSECUTOR

VERSUS

GEOFFREY KILONZO MAKAU.....ACCUSED

RULING

Geoffrey Kilonzo Makau (hereinafter the Accused person), was charged with one count of murder contrary to section 203 as read together with section 204 of the Penal Code. The particulars of the charge as stated in the information from the Director of Public Prosecutions dated 26th January 2010, are that on the 12th day of January 2010 at Mwanga village, Mitahoni location, Kathiani District within Eastern Province, he unlawfully murdered Winfred Mwende Kiindu (hereinafter referred to as “the deceased person”).

The Accused person pleaded not guilty to the offence on 18th February 2010, and the trial commenced before Mutende J. on 18th March 2015, and the learned Judge heard six prosecution witness. The learned judge was subsequently transferred, and I took over the conduct of the trial on 21st January 2016 after complying with the provisions of section 200 of the Criminal Procedure Code , and heard two more prosecution witnesses. The Defence and Prosecution counsel were then directed to file submissions on case to answer, after the Prosecution was directed to close its case for failure to produce additional witnesses.

Andrew Makundi & Company Advocates, the learned counsel for the Accused person filed submissions dated 23rd October 2017, wherein he urged that the prosecution case or theory is incomplete. After summarizing the evidence of the Prosecution witnesses, he urged that the Prosecution had not discharged its burden of proof for the following reasons:-

- a) It is not shown that Accused, with malice aforethought, caused the death of the Deceased by an unlawful act or omission
- b) The Prosecution witnesses allude to an injury on the neck of the deceased and there was no evidence as to whether or how the Accused inflicted the injury.
- c) The Accused is said to have been unconscious and it is not known whether this was before or after the Deceased died, or what caused him to be unconscious.
- d) There was no evidence as to the cause of the injury to the Deceased.

Ms Mogoi Lilian, the learned prosecution counsel, filed submissions dated 8th January 2018 wherein the evidence by the prosecution was summarized, and it was contended that the prosecution through the evidence adduced in court has proved a *prima facie* case against the accused as was explained in **Ramanlal Rambaklal Bhatt v R, (1957) EA 332**. The reasons for this argument were that even though the evidence adduced was circumstantial in nature since there was no eye witness to the incident, it is clear that the Accused person was the last person seen with the Deceased when she was alive and the only person found in the same house (his house) with the Deceased when she was found dead .

Further, that the postmortem revealed that the deceased’s trachea was slit, her lungs were engorged with blood , her right and left internal and external carotid vessels were cut, the oesopagus was slit anteriorly and that the left vagus was cut. Further, that the deceased died as a result of brain ischaemia due to lack of blood to the brain due to the cut vessels.

Lastly, that while it was desirable for the Prosecution to call the investigating officer to testify, the said investigating officer could not be traced to testify within the time given, hence the court closed the prosecution's case. However, that the failure of the investigating officer to testify is not fatal to the Prosecution's case in view of the overwhelming circumstantial evidence herein.

After perusing the original and typed proceedings and the submissions made by the prosecution and defence counsel, I am called upon to make a ruling pursuant to section 306 of the Criminal Procedure Code as to whether to find the Accused person not guilty or to put him on

his defence. The issue before the Court therefore is whether the evidence brought by the prosecution establishes a *prima facie* case to warrant putting the Accused person on his defence.

The threshold for a finding of a *prima facie* case has been set out in several cases among them **Ramanlal Trambaklal Bhatt v R [1957] EA 332**, **Wibiro alias Musa v R [1960] EA 184** and **Anthony Njue Njeru v Republic [2006] eKLR**. The law in this regard is that although a court is not required at this stage to establish that the prosecution has proved its case beyond reasonable doubt, it must nonetheless be satisfied that a reasonable tribunal directing its mind to the law and the evidence could convict if no explanation is offered by the defence.

I have analysed the evidence brought by the prosecution and arguments by the parties in light of the threshold that needs to be met to establish a *prima facie* case of murder. The Prosecution called seven witnesses to testify. Of these witnesses, Rosalia Nthenya Kiilu (PW1) James Muindi Paul (PW2), Erick Makau John (PW3) and Mary Ndunge (PW5) testified that they found the deceased together with the accused who was unconsciousness, inside a locked house on 12th January 2010.

Joseph Musee Mutunga (PW4) who was the deceased's uncle, testified as to identifying the deceased's body during the postmortem, while Doctor John Mutunga (PW8) testified that the cause of death of the deceased was lack of blood in the brain due to cut blood vessels on her neck. After considering the testimony of these witnesses, I am satisfied that there is sufficient evidence to put the Accused Person on his defence as he was placed at the scene of the crime.

The Accused Person is thus informed of his right to remain silent, to give unsworn statement in which case he shall not be cross-examined, or to give sworn testimony in which case he shall be cross-examined by the prosecution. The Accused Person may also elect to make an address through his advocate, and is also informed of his right to call witnesses.

Orders accordingly.

DATED AND SIGNED AT MACHAKOS THIS 6th DAY OF MARCH 2018.

P. NYAMWEYA

JUDGE