**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**HIGH COURT CRIMINAL CASE NO. 48 OF 2014**

**REPUBLIC..................................................PROSECUTOR**

**VERSUS**

**JACKSON MUIMI TUMA...............................ACCUSED**

**RULING**

1. The accused **JACKSON MUIMI TUMA** was 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 16th day of May 2014 at Garden Villa in Spring Valley Area within Nairobi County murdered **SONAL D'SOUZA**.

2. He pleaded not guilty to the said charges and to prove its case against him the prosecution called a total of twelve (12) witnesses and at the close of the prosecution case both the defence and the prosecution opted not to make any submissions and left it to the court to make a determination on whether *prima facie* case had been established by the prosecution to enable the court place the accused on his defence or to acquit if none is established under the provisions of **Section 306** of the **Criminal Procedure Code**.

3. What constitutes *prima facie* case and the standard of proof thereon is now well settled in Kenya and the court is not about to state any new grounds than as was stated in the two celebrated cases of:- **REPUBLIC v JAGJIVAN M. PATEL & Others (1) TLR 85.**

> ***"All the court has to decide at the close of evidence of the charge is whether a case is made out against the accused just sufficiently to require him to make a defence, it may be a strong case or it may be a weak case. The court is not required at this stage to apply its mind in deciding finally whether the evidence is worthy of credit or whether, if believed, it is weighty enough to prove the case conclusively, beyond reasonable doubt. A ruling that there is a case to answer would be justified, in my opinion, in a border line case where the court, though not satisfied as to conclusiveness of the prosecution evidence, if yet of the opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conclusion."***
>
> ***(Emphasis added).***

4. In the case of **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC (1957) EA 332** the East African Court of Appeal had this to say:-

> ***"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)***

5. 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 <u>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.”</u>***

***(Emphasis added).***

6. I am in total agreement with Justice Ojwang on this issue and with that in mind I have looked at the evidence of **PW2 BEATRICE MAUTI SAVAYI** the house help of the deceased who was personally known to the accused who used to go to the house of the deceased and cook for them and who placed the accused at the scene and **PW6 AMOS OWUOR** a watchman at the gate, **PW7 ANN WANGECHI MURIUKI** who used to work with the accused at 680 Hotel, **PW10 CORP. FRANCIS NZINGILA** and **PW11 MARTIN WEKESA** who confirmed the mobile phone details of the accused and his location at the time of the alleged commission of the offence.

7. Without giving detailed analysis of the said evidence at this stage and bearing in mind that the test at this stage is whether the court can convict the accused with the evidence on record should he opt to remain silent, I am satisfied that a *prima facie* case has been made against the accused person to enable me put him on his defence which I hereby do. The accused is therefore advised on his rights under **Section 306** of the **Criminal Procedure Code** and called upon to choose how he intends to defend himself.

8. The accused is advised of his rights under **Section 306** of the **Criminal Procedure Code.**

**DATED, SIGNED and DELIVERED at Nairobi this 3rd day of May, 2018.**

**.......................**

**J. WAKIAGA**

**JUDGE**

***<u>In the presence of:-</u>***

*Miss Wegulu for the State*

*Mr. Ogada for Kinyori for the Accused*

*Accused present*

*Court clerk Paul*