



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO 109 OF 2013

REPUBLICRESPONDENT

VERSUS

DAVID MUGAMBI PIUSACCUSED

RULING

1. The accused **DAVID MUGAMBI PIUS** was charged with murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which were that on the 10th day of November, 2013 at Eighth Street in Eastleigh within Nairobi County murdered **PATRICK KAYONGI JULIUS**.

2. He first appeared in court on 13/11/2013 before Muchemi J. without an Advocate and his plea was deferred to 20/11/2013 when he appeared before Korir J. when the court was informed that the psychiatrist report had indicated that he was of unstable mind. He was therefore referred to Mathari Mental Hospital for further examination and on 12/5/2014 he was certified fit to take plea and on 11/6/2014 a plea of not guilty was entered for him.

3. On 22/6/2016 his trial commenced before this court and to prove its case against him the prosecution called a total of seven (7) witnesses and at the close of prosecution case both the defence and the prosecution filed written submissions.

SUBMISSIONS

4. On behalf of the prosecution, it was submitted that through the evidence of **PW2**, **PW3** and **PW4** the prosecution had proved that there was a commotion between the accused and the deceased with **PW6** stating that he saw the accused stab the deceased whose cause of death was confirmed by **PW7** as being a result of a stab wound.

5. On behalf of the accused it was submitted that the prosecution had failed to establish *prima facie* the accused *mens rea* in the alleged murder of the deceased. It was submitted further that there was contradictions among the prosecution witnesses on the murder weapon which was not produced in court to cure those contradictions. It was finally stated that the conditions prevailed at the time of the commission of the alleged offence were not sufficient for proper identification.

6. At this stage of the proceedings all that the court has to determine is whether the prosecution has established a *prima facie* case to enable the court place the accused persons on their defence. *Prima facie* case has been defined in the case of **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC (1957) EA 332** as follows:-

“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)

7. In the case of **REPUBLIC v JAGJIVAN M. PATEL & Others (1) TLR** as follows:-

“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 borderline case where the court, though not satisfied as to conclusiveness of the prosecution evidence, is yet of opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conviction.”

(Emphasis added)

8. The court is further cautioned not to make elaborate comments on the evidence on record if the same was to put the accused on his defence so as not to prejudice the defence which the accused might opt to offer.

9. With this in mind and without saying much thereon I have looked at the evidence tendered before court and in particular the evidence of **PW2, PW3** and **PW6** and find and hold that the prosecution has established *prima facie* case to enable the court put him on his defence which I hereby do.

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

Dated, delivered and signed at Nairobi this 16th day of October, 2018.

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J. WAKIAGA

JUDGE

In the presence of:-

Ms. Wegulu for the State

Mr. Wakaba for the accused

Accused present

Court assistant Karwitha