REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL MURDER CASE NO. 11 OF 2014

REPUBLIC.....ACCUSED

VERSUS

DAVID GACHOKI KIBUCHI.....APPELLANT

RULING

The accused is charged with the murder of Boniface Muchira Gichobi contrary to **Section 203 as read with Section 204 of the Penal Code Cap 63 Laws of Kenya**. He denied the charge. The prosecution proceeded to call 8 witnesses in efforts to prove the charge against him. At the close of the case for the prosecution, the parties took a date for ruling on whether or not the accused has a case to answer.

Whether or not the accused has a case to answer

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.***
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> ***(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…..***
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> **A definition of what constitutes a prima facie case was given in 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:**
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> **"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."**

I have considered the evidence adduced by the prosecution witnesses. At this stage the court is not supposed to give reasons where it finds that the accused has a case to answer. The reasons would be prejudicial to the accused. All what the court is supposed to do is to consider whether there is sufficient evidence upon which the court will call upon the accused to address the court or give unsworn statement and call witnesses.

From the evidence tendered by the prosecution, I find that in line with the holding in **Bhatt –v- R** the accused has a case to answer and will proceed as provided under **Section 306 C.P.C (Supra).**

Dated at Kerugoya this 22nd day of November 2018.

L. W. GITARI

JUDGE