



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**HIGH COURT CRIMINAL CASE NO. 63 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**MARCEL JUMANNE DALANCE.....ACCUSED**

**RULING**

1. The Accused was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which on the night of 10<sup>th</sup>/11<sup>th</sup> July, 2014 at Alpha House in Juja Area within Kiambu County murdered **FAITH VICKY OWUOR**.

2. He pleaded not guilty to the said charges and to prove its case against him the prosecution called a total of thirteen (13) witnesses and at the close of the prosecution case both the prosecution and the defence filed written submissions on whether a case to answer had been established.

**SUBMISSIONS**

3. On behalf of the prosecution it was submitted that through the eye witness evidence and the existence of a grudge between the accused and the deceased, the prosecution had established a *prima facie* case to enable the court place the accused on his defence.

4. On behalf of the defence it was submitted that save for the fact that the accused had a relationship with the deceased and both lived together, there was no evidence tendered by the prosecution witnesses either directly or indirectly to connect the accused with the offence. It was submitted that the differences between the deceased and the accused was so insignificant when the nature of their communication is taken into totality. It was therefore submitted that no *prima facie* case was established against the accused who should be discharged.

5. At this stage what the court is required to do is to establish whether a *prima facie* case has been established under the principles set out 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)*

6. 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)*

7. 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 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.”*

*(Emphasis added).*

8. With this in mind I have looked at the evidence tendered and in particular the evidence of **PW1, PW3, PW4, PW7** and **PW13** and without saying much hereto find and hold that the prosecution has established *prima facie* case against the accused person to enable me put him on his defence which I hereby do so as to offer him an opportunity to say his side of the story if he so wishes having taken note of his Constitutional right under **Article 50 (2) (i) and (k)** of the **Constitution of Kenya 2010**.

**DATED, SIGNED and DELIVERED at Nairobi this 22<sup>nd</sup> day of November, 2018.**

.....

**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Mr. Okeyo for the State*

*Mr. Chiuri for Mr. Nyagweso for the accused*

*Accused present*

*Court Assistant: Karwitha*