



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAROK**

**CRIMINAL CASE NO 32 OF 2017**

REPUBLIC .....PROSECUTOR

**VERSUS**

ROBERT GITAU.....ACCUSED

**RULING**

1. The issue before me is whether a prima facie case has been made against the accused, so as to require him to be put on his defence in terms of section 306 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya.

2. The law in this regard according to *Ramanlal Bhatt v. R (1957) EA 3321* is that a prima facie case is established when a tribunal properly itself on the law and evidence could convict if the defence offers no explanation.

3. Counsel for the accused, Ms Nkurrenah, submitted that the evidence has not established a prima facie case against her client. She has cited a number of authorities on circumstantial evidence including *R. v. Kipreging Arap Koskei and Another (1949) 16 EACA 135*, in which the court pronounced itself in the following terms:

*“In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.”*

4. Furthermore, counsel cited *Sawe v. R (2003) KLR 364*, in which the Court of Appeal stated that:

*“Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond doubt.”*

5. Furthermore, counsel blamed the investigating officer for not carrying out a thorough investigation. According to her, the investigating officer only collected the body of the deceased and took it to mortuary. He also recovered a jembe and a headscarf, which allegedly were the items of the deceased that were recovered in the house of the accused. Other than this recovery, the investigating officer did not undertake any further investigations.

6. Based on the above evidence which is circumstantial in nature, she urged the court to find that her client is not guilty in terms of section 306 (1) of the Criminal Procedure Code. She therefore urged the court to acquit her client pursuant to section 322(1) of the Criminal Procedure Code.

7. The prosecution did not make any submissions. Instead, they left the matter to the court to decide.

8. I have considered counsel’s submissions and the totality of the prosecution evidence including the recalled evidence in the light of the applicable law. As a result, I find that a prima facie case has been made against the accused.

9. It therefore follows that the accused has a case to answer. He is hereby put on his defence in terms of section 306 (2) of the Criminal Procedure Code.

Ruling dated and signed at Narok this 14<sup>th</sup> day of November, 2018 in the presence of Mr. Omwega for the state and Mr. Yenko holding brief for Ms Nkurrenah for the accused.

**J. M. Bwonwonga**

**Judge**

**14/11/2018**