

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL CASE NO. 24 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

ELIJAH MUTISYA MUNYAO.....ACCUSED

RULING

Elijah Mutisya Munyao, (hereinafter the Accused person), is charged with one count of murder contrary to section 203 as read together with section 204 of the Penal Code. The particulars of the charge as stated in the information from the Director of Public Prosecutions dated 1st October 2012 are that on the 18th day of July, 2012 at Kilembwa Village, Wamunyu Location, Mwala District within Machakos County he murdered David Musau Kivuitu. (hereinafter referred to as “the deceased person”).

The Accused person pleaded not guilty to the offence on 5th October 2012, and the trial commenced before Mutende J. on 13th August 2013, and the learned Judge heard nine prosecution witness. I took over the conduct of the trial on 20th January 2016, and after complying with the provisions of section 200 of the Criminal Procedure Code, the Accused person submitted that he wanted the case to proceed from where it had stopped. I heard two more prosecution witnesses after which the prosecution closed its case. The Defence and Prosecution counsel were thereupon directed to file submissions on case to answer.

P.M. Mutuku & Company Advocates, the learned counsel for the Accused persons filed submissions dated 6th March 2017, wherein they submitted after analyzing the evidence by the prosecution’s witnesses that the evidence was contradictory, was not reliable and that incomplete and incompetent investigations were carried out by the investigating officer. Therefore, that the prosecution had failed to establish a *prima facie* case against the Accused person to warrant him to be put on his defence.

Ms Rita Rono, the learned prosecution counsel, filed submissions dated 3rd May 2017 wherein the evidence by the prosecution was summarized, and it was contended that the Prosecution had met the threshold set out in **Ramanlal Rambaklal Bhatt v R, (1957) EA 332** for reasons that the accused persons were placed at the scene of the murder, the fact of death was established and not challenged, and malice aforethought can be inferred from the warning the accused gave the deceased at the bar they were drinking before the deceased was fatally stabbed. Therefore, that the accused persons have a case to answer and should be put to defense.

After perusing the original and typed proceedings and submissions made by the prosecution and defence counsel, I am called upon to make a ruling pursuant to section 306 of the Criminal Procedure Code as to whether to find the Accused person not guilty or to put him on his defence.

The issue before the Court therefore is whether the evidence brought by the prosecution establishes a *prima facie* case to warrant putting the accused persons on their defence. The threshold for a finding of a *prima facie* case has been set out in several cases among them **Ramanlal Trambaklal Bhatt v R [1957] EA 332, Wibiro alias Musa v R [1960] EA 184** and **Anthony Njue Njeru v Republic [2006] eKLR**. The law in this regard is that although a court is not required at this stage to establish that the prosecution has proved its case beyond reasonable doubt, it must nonetheless be satisfied that a reasonable tribunal directing its mind to the law and the evidence could convict if no explanation is offered by the defence.

I have analysed the evidence brought by the prosecution and arguments by the parties in light of the threshold that needs to be met to establish a *prima facie* case of murder. After considering the testimony of the eleven prosecution witnesses, I am satisfied that there is sufficient evidence to put the Accused on his defence. There was evidence brought in this regard by the prosecution that placed the accused person at the scene of the stabbing of the deceased. The deceased was also identified during the postmortem conducted on his body, and testimony brought as to the cause of his death.

The Accused is consequently informed of his right to remain silent, to give unsworn statement in which case he shall not be cross-examined or to give sworn testimony in which case he shall be cross-examined by the prosecution. He may also elect to make an address through their advocate, and is also informed of his right to call witnesses.

Orders accordingly.

DATED AND SIGNED AT MACHAKOS THIS 13th DAY OF JUNE 2017.

P. NYAMWEYA

JUDGE