

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT GARISSA
CRIMINAL CASE NO. 9 OF 2013

(Formerly Nairobi Criminal case No. 99 of 2010)

REPUBLIC.....STATE

V E R S U S

HILLOW ABDULLAHI KORIYOW.....ACCUSED

RULING

This ruling relates to whether the accused herein who stands charged with the offence of murder should be put on his defence. The accused was initially charged in Nairobi and the case partly heard there. Particulars of the offence are that 7th November 2010 at Ifo Refugee Camp in Lagdera District within North Eastern Province murder Hussein Badle Mohamed.

At the close of the prosecution case, both the defence counsel Mr. Nyasani and the Prosecuting Counsel Mr. Okemwa made submissions on a case to answer. The defence counsel Mr. Nyasani filed written submissions which he relied upon. The Prosecuting Counsel Mr. Okemwa made oral submissions. Both sides relied on case authorities.

At this stage of the trial, the court is not required to determine whether the prosecution has proved its case against the accused beyond any reasonable doubt. What is required is for the court to determine whether the prosecution has established a prima facie case against the accused person to justify him being put on his defence.

As pointed out by both the defence counsel and the prosecuting counsel, what constitute a prima facie case was clearly described in the case of **Ramanlal Bhatt -vs- R (1957) EA 332** wherein at page 334 the court of appeal for East Africa stated that:-

“The legal burden is always on the prosecution to prove its case beyond reasonable doubt. We cannot agree that a prima facie case is made out if at the close of the prosecution the case is merely one which on a full consideration might possibly be thought sufficient to sustain a conviction – 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 discredited evidence”.

It is clear therefore that a prima facie case is not established by the number of witnesses have testified alone. It is not established by any amount incredible evidence. It is not established by evidence which does not connect the accused to the offence. It is not established by evidence that does not disclose an offence.

However when the evidence establishes that an offence has been committed and that the accused from the totality of the evidence is connected with the offence committed, then in my view in that event a prima facie case has been established. It must be evidence that may lead a court to convict the accused if he does not say anything in his defence.

In the present case, the accused was placed at the scene through evidence. The deceased died. There is evidence of assault by the accused on the deceased. He died immediately. In my view the accused from the evidence on record has a case to answer. I must state that there are rare situations in which medical evidence might not be necessary to prove the death of a deceased person. It is important to bear in mind that in case of murder the death can be immediate, it can also occur within a period of one year. Sometimes the body might not be found. Each case has to be considered on its own merits.

From the evidence on record herein, I find that the accused has a case to answer. I will thus proceed to put him on his defence and explain to him the options available to him in conducting his defence.

Dated and delivered at Garissa this 15th day of September 2016.

GEORGE DULU

JUDGE