



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
HIGH COURT CRIMINAL CASE NO. 61 OF 2011

REPUBLICPROSECUTOR

VERSUS

WILFRED MWITIACCUSED

RULING

1. The accused faces a charge of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which are that on the 18th day of February, 2010 at Kariobangi, Kiamaiko Junction along Outer-Ring Road in Nairobi within Nairobi County within the Republic of Kenya murdered **PATRICK NDAI MUNYUA** alias **SENIOR** alias **STEPHEN KAMAU MUNYUA**.
2. The accused denied the said charges and to prove its case, the prosecution called a total of eighteen witnesses. At the close of the prosecution case, the accused submitted that no case had been proved by the prosecution to the required standard to establish a prima facie case to enable him being placed on his defence.
3. It was submitted that at the close of the prosecution case, it had not been established that there was an act of killing done by anybody else rather than the accused and that the court has been left with many theories as to what happened to the deceased.
4. It was further submitted that the prosecution had deliberately withheld from the court vital witnesses who would have confirmed the innocence of the accused person thereby failing in its duty to assist the court in establishing the truth.
5. On behalf of the prosecution it was submitted that the state called several civilian witnesses who gave a corroborated account showing that the deceased was arrested on 18th February, 2010 and locked at the cells of Huruma Police Station and was later removed from the Police Station to unknown destination and that later on the same night his body was collected at National Concrete on Outer-Ring Road as a result of an alleged shoot-out between him and the police.
6. It was submitted that during the post mortem a bullet head was recovered from the body of the deceased which bullet head according to the prosecution evidence was fired from Ceska pistol Serial No.7990 which had been issued to the accused person as confirmed through arms movement register. It was therefore submitted that the prosecution had established a prima facie case to enable the accused be placed on his defence.
7. It should be pointed out that at this stage the issue is not whether or not the prosecution has established a case against the accused person beyond reasonable doubt but whether a case had been made to justify putting the accused person on his defence as was stated 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 in support of a 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 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 case to answer – would be justified in my opinion, in a border line case where the court, though not satisfied as to the conclusiveness of the prosecution evidence, is yet of the opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conviction. (Emphasis added)

8. In the case of **RAMANLAL TRAMBAKLAL BHATT v REPUBLIC [1957] EA 332** the court defined a prima facie case that the court ought to consider at this stage in the following terms.

“The court is not required at this 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 final determination can only 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 be mean one which a reasonable tribunal properly directing its mind to law and the evidence could convict if no explanation is offered by the defence.”

9. From the evidence tendered on behalf of the prosecution and in particular the evidence of **PW2 Jeff Kimani** who allegedly saw and spoke with the deceased at Huruma Police Station, **PW6 Amina Mahat Abdi** who allegedly witnessed him being handcuffed by somebody she alleged to had been the accused person, **PW13 SGT OPICHO** who visited the scene of an alleged police shoot out, **PW12 Dr. JOHANSEN ODUOR** and **PW 16 Mr. Francis Langat** and being alive to the submission by Mr. Njanja on behalf of the accused to the effect that the prosecution deliberately kept vital witnesses from the court, I am satisfied and find that the prosecution has made up a prima facie case against the accused person and find that he has a case to answer.
10. Having taken note of the accused’s right under Criminal Procedure Code and the Constitution which include the right to keep quiet, I am of the view that this is a case where, if he so wishes, the accused person should be given an opportunity to say his side of the story for record purposes. The accused person is hereby informed of his rights under **Section 306(2) of Criminal Procedure Code** and it is now upon him through the wise advice of his counsel to choose how he wishes to defend himself.

Dated, signed and delivered at Nairobi this 3rd Day of December, 2015

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J. WAKIAGA

JUDGE

In the presence of

Mr. Mugo for Mr. Mwenda for the state

Mr. Nyangaya for Mr. Njanja for the accused

Mr. Mbanya holding brief for the family of the deceased

Accused present

Yusuf court clerk