



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 60 OF 2018

REPUBLIC

(DPP)

PROSECUTOR

VERSUS

WILFRED MABIA

ABUNG'ANA 1ST ACCUSED

FELIX MUHUNZU LUSEKA 2ND

ACCUSED

BENSON MATE MAJIMBO 3RD

ACCUSED

RULING

1. The Accused persons are charged with murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars being that on the 8th day of September 2018 at Kakamega Forest, they jointly with others not before the court unlawfully murdered Doris Musiya.

2. The prosecution adduced evidence through 6 witnesses. The evidence is that on 8th September 2018, PW1 had left her deceased daughter who was 20 years old, at their home as she went to attend a funeral. When she left at 9.00 a.m., the deceased was dressed in a black skirt, and a red printed T-shirt. On arrival from the funeral at around 2.00 p.m., the deceased was missing. She searched for the deceased and the next morning, some two women informed her that they had found her at the forest known as Mstuni ya Nyatisop. She proceeded to the forest where she saw the deceased who was naked and had injuries on the body. The police were informed and commenced investigations. PW1 said that she did not know who killed the deceased.
3. The evidence of PW2 was that he was the Chief Mukungu Location. On 9th September 2018, he received a report of murder and undertook investigations during which he was directed to the three Accused persons as the suspects. He collected the Accused person's clothes and also recovered a woman's petty coat and a cream T-shirt from Accused 3's home. They recovered nothing from Accused 2's

- home. In the course of the inquiries, he testified that the deceased had been raped.
4. The Government Analyst testified as PW4. He recalled that he analyzed 14 samples that were forwarded to their offices by PC Maritim from the DCI office Kakamega concerning this case. Upon analysis, the DNA profile of the 1st and 2nd Accused did not match any of the DNA profiles generated from the samples handed over to him. In effect, there was nothing linking the 1st and 2nd Accused to the deceased.
 5. The Doctor who conducted the post-mortem concluded that the cause of death was blunt trauma to the chest and abdomen. The Doctor also concluded that the deceased had been raped due to the existence of vaginal injury in the posterior wall.
 6. This court is now called upon to determine whether the prosecution has established a *prima facie* case against the 3rd Accused persons.
 7. For the court to find that there is a *prima facie* case, the prosecution needs to adduce evidence that would at face value in the absence of a rebuttal or disproof, end up in a

conviction. This means that the essential ingredients of the offence need to be established. In the case of murder, the prosecution need to prove that the person named as having been murdered is dead, that the death was caused by an unlawful act, and that there is sufficient evidence, which if not rebutted would lead to the inevitable conclusion that the accused person committed the unlawful act and that in doing so, he acted maliciously. If at the end of the prosecution's case, the evidence is such that in the event the accused chooses to keep quiet there would be no conviction, then the court must find that there is no *prima facie* case.

8. In **Ronald Nyaga Kiura v. Republic [2018] 5030 (KLR)** the court rendered itself as follows:-

“It is important to note that at the close of prosecution, what is required in law at stage is for the trial court to satisfy itself that a prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the Criminal Procedure Code. A prima facie case is

established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebutted is offered by an accused person. This is well illustrated in the cited Court of Appeal case of **RAMANLAL BHAT -VS- REPUBLIC [1957] EA 332.** At that stage of the proceedings the trial court does not concerned itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence.”

9. The meaning of a prima facie case had been well defined in the earlier case of **Ramanlal Trambaklal Bhatt v. Republic [1957] EA 332 at 334 and 355** where the court held as follows:-

“Remembering that the legal onus 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 full consideration

might *possibly* be thought sufficient to sustain a conviction.” This is perilously near suggesting that the court would 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 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 worthless discredited evidence... It is may not be easy to define what is meant by a “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.”

10. Having said that, I have considered the evidence at the close of the prosecution case. It is apparent that the prosecution’s case rested solely on circumstantial evidence. None of the witnesses who testified in court personally saw any of the Accused persons with the

deceased on the day she was murdered. The DNA report did not link Accused 1 and Accused 2 to the deceased as none of their DNA material were found in the deceased's vagina or on any of the clothes identified as belonging to her. As for Accused 3, there was sufficient evidence to link him to the deceased.

11. In the final analysis, I do find that a *prima facie* case has been established against Accused 3 and he therefore has a case to answer. As for Accused 1 and 2, having determined that there is no evidence to link them to the offence, they have no case to answer. They are acquitted under Section 306 (1) of the Criminal Procedure Code and set free forthwith unless otherwise lawfully held.
12. Accused 3 is placed on his defence.
Orders accordingly.

Dated, signed and delivered at Kakamega this 18th day of November 2025.

**A. C. BETT
JUDGE**

In the presence of:

Ms. Chala for the Prosecution

Ms. Luseno for the Accused

Court Assistant: Polycap

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