Republic v Mwaura & another (Criminal Case 14 of 2018)
[2025] KEHC 5020 (KLR) (28 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5020 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NANYUKI

CRIMINAL CASE 14 OF 2018

AK NDUNG'U, J

APRIL 28, 2025

BETWEEN

REPUBLIC ..... PROSECUTION

AND

SIMON MWAURA ..... 1ST ACCUSED

SAMMY WEKESA SIMIYU ..... 2ND ACCUSED

RULING

1. The Accused persons herein, Simon Mwaura And Sammy Wekesa Simiyu, are charged with murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars were that on 25/08/2018, at Muthaiga area of Wiyumiririe Trading center, Laikipia central sub-county Laikipia County within the Republic of Kenya jointly with others not before court murdered Michael Ngunjiri Kihumba alias Dedan Wachiuri.

2. The accused persons took plea on 27/09/2018 and they pleaded not guilty to the charge. The prosecution called a total of nine (9) witnesses and on 11/11/2024 the prosecution closed their case.

3. In this ruling, the court is being called upon to determine whether or not the prosecution has made out a prima facie case against the accused persons that would warrant this court to call upon them to give their defence.

4. The prosecution filed written submissions. The Accuseds' counsel chose not to file written submissions. The prosecution case is that the fact and cause of death of the deceased was proved. That the prosecution relies on the circumstantial evidence. That there is evidence connecting the accused persons with the death of the deceased as the accused persons were the last to be seen with the deceased before he was found dead later on the same day. Further, the 2nd accused was found at the scene of the crime and he pretended not to know the deceased despite the two living in the same house. The prosecution's evidence was provided by credible and reliable witnesses hence the

circumstantial evidence met the required threshold and actively linked the accused persons to the death of the deceased.

5. The learned prosecution counsel further submitted that the intention to cause grievous harm is in itself considered to be malice aforethought and as per the postmortem report, the cause of death was severe head injury with a collapsed skull. Further, the deceased's body had a gunshot wound with the entry being the right lower abdomen and an exit wound on the upper left thigh. Therefore, malice aforethought was proved due to the nature of injuries the deceased sustained coupled with the fact that the deceased was found lying by the roadside which points to an intention by the accused persons to cause grievous harm. Therefore, the prosecution has proved a prima facie case against the accused as explained in Ramanlal Trambaklal Bhat vs. Republic (1957) EA 332 and Ronald Nyaga Kiuria vs. Republic (2018) eKLR.

6. I have considered the evidence on record from the prosecution's side, the submissions made and the authorities cited. I reiterate that the issue before me at this stage is whether the evidence so far adduced warrants calling upon the accused persons to defend themselves. In other words, does the accused persons have a case to answer? In Republic vs. Abdi Ibrahim Owl [2013] eKLR a prima facie case was defined as follows: -

> " Prima facie" is a Latin word defined by Black's Law Dictionary, 8th Edition as "Sufficient to establish a fact or raise a presumption unless disproved or rebutted". "Prima facie case" is defined by the same dictionary as "The establishment of a legally required rebuttable presumption". To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with. In Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335, the court stated as follows:
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> "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."

7. The question that this court has to deal with and answer at this stage is therefore, whether based on the evidence before this Court, the court after properly directing its mind to the law and the evidence may convict if the accused chose to give no evidence. The threshold was well put in Ronald Nyaga Kiura vs. Republic [2018] eKLR where the court stated;

> " It is important to note that at the close of prosecution, what is required in law at this 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 rebuttal 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 concern 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."

8. It therefore follows that a case to answer ought only to be found where the prosecution's case, on its own, may possibly, though not necessarily, succeed.

9. Having considered the evidence adduced, am satisfied that a prima facie case has been established to warrant both the Accused persons being placed on their defence.

10. Accordingly, each Accused is placed on his own defence.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF APRIL 2025.

A.K. NDUNG'U

JUDGE