REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT LODWAR

CRIMINAL CASE NO. 2 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

ATAHIR ABUBAKAR ADAM.....ACCUSED

RULING

1. The accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars of which were that on 18th April, 2017 at Kakuma Refugee Camp. In Turkana West sub-county within Turkana County murdered **NUON ADAMA ABDULKARIM.**

2. He pleaded not guilty to the said charges and to prove its case against him, the prosecution called and examined six (6) witnesses at the close of which the court invited the prosecution and the defence to make submission on whether the prosecution had established a prima facie case to enable it place the accused on his defence.

3. On behalf of the accused Mr. Pukha submitted that the same shall not make any submissions which position was taken by the prosecution and they therefore left it to the court to make a determination based on the evidence on record.

4. 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 has been made to justify calling upon the accused person to offer an explanation 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 the evidence in support of the 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 a 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."

5. Justice J.B. Ojwang, as he then was, on the other hand in the case of **REPUBLIC v SAMUEL KARANJA KIRIA CR. CASE NO.13 OF 2004 NAIROBI [2009] eKLR** had this to say on *prima facie* case: -

"The question at this stage is not whether or not the accused is guilty as charged but whether there is such cogent evidence of his connection with the circumstances in which the killing of the deceased occurred, that the concept of prima facie case dictates as a matter of law that an opportunity be created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled . . .

The Court of Appeal Criminal Appeal No. 77 of 2006, the Court of Appeal expressed that too detailed analysis of evidence, at no case to answer stage is undesirable if the court is going to put the accused onto his defence as too much details in the trial court's ruling could then compromise the evidentiary quality of the defence to be mounted." (Emphasis added).

6. With the injunction by Justice Ojwang in mind, I have taken into account the evidence of PW1 who placed the accused at the scene, whose evidence was corroborated by PW2 and without saying much thereon so as not to compromise the defence the accused is likely to offer should he opt to do so, I am satisfied that the prosecution has established a prima facie case to enable me put the accused on his defence which I hereby do.

7. The accused is therefore advised of his right under Article 50(2) (i) and (k) and Sections 306(2) (3) and 307 of the Criminal Procedure Code and is now called upon to decide through the legal advice of his Advocate on record how he intends to defend himself.

DATED, SIGNED AND DELIVERED AT LODWAR ON 8TH DAY OF JULY, 2021

.....

J. WAKIAGA

JUDGE