

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

SITTING AT MPANDA

CRIMINAL JURISDICTION

CRIMINAL SESSION NO.29 OF 2020

THE REPUBLIC

VERSUS

JUMA ALLY @ MAGANGA

RULING

MRISHA, J.

Juma Ally @ Maganga the accused person was charged with the offence of murder Contrary to Section 196 and 197 of the Penal Code [Cap 16 R.E 2019]. The prosecution alleged that the accused person did, on 21st day of August, 2019 at Msemulwa area within the Mpanda District in Katavi Region, murder Ally s/o Athuman. The accused person plead not guilty to the information. The prosecution summoned four witnesses and tendered two exhibits, Postmortem report (Exhibit P1), and Sketch Map (Exhibit P2), to establish the accused person guilty of the offence of murder.

At the closure of the prosecution's case the defence did not submit as to whether the prosecution established a prime facie case. I now give myself time to make a finding whether the accused person has a case to answer.

The ruling seeks to answer to the issue whether Juma Ally @ Maganga the accused person, has a case to answer in terms to section 230 of the Criminal procedure Act [Cap 20 R.E 2022] the Criminal Procedure Act.

Did the prosecution establish a prima facie Case?

It is a duty of a Court at this stage to review the evidence to find out whether the prosecution established a prime facie case. Prime facie case. A prime facie case is prime facie case. A prime facie case is such evidence as will suffice until contradicted and overcome by other evidence (see. Black's Law Dictionary 8th Ed). It is also stated that a prime facie evidence is the evidence good and sufficient on its face, such evidence as in the judgement of the law is sufficient to establish a given fact.

A prima facie case is said to be established where a reasonable tribunal, properly directing its mind to the law and the evidence on record, could convict it the accused is not called upon to defend himself. See the case of **DPP vs Peter Kibatala**, Criminal Appeal No. 4 of 2015 Court of

Appeal Tanzania unreported. Where the Court of Appeal defend prime facie case as follows: -

"What is meant by prime facie Case has been, with lucidity, elaborated and articulated in the case at Ramanlal Trambakhal Bhatt Vs Republic [1957] E.A 332-335 where it was stated that:-

"Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prime facie case is made out if, at the close at the prosecution the case is merely one, which on full consideration might possibly be thought sufficient to sustain conviction. This is perilously near suggesting that the Court will fill the gaps in the prosecution case Nor can we agree that the question whether there is a case to answer depends only whether there is some evidence, irrespective of its credibility or weight, sufficient to put the accused his defence. A mere Scintilla of evidence can never be enough, nor can any amount

at worthless discredited evidence. It may not be easy to define what is meant by a prima face, 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”

I find that, there is enough evidence establishing beyond all reasonable doubt that Ally ^{S/o} Athuman is dead. According to Dr. Baraka Muranga (PW3) and the Post Mortem report Exhibit P.1, Ally ^{S/o} Athumani’s death was due to suffocation following head injury and burn injury. The only task the prosecution was facing is to link Ally ^{S/o} Athuman’s death with the accused person.

As hinted above the prosecution summoned four witnesses, Rose Kamanda (PW1), A/INSP. Godfrey Ndangala (PW2), Baraka Mwanga (PW3) and H. 751 D/C Kennedy (PW4). There is no sufficient evidence linked the accused person with the death of Ally ^{S/o} Athuman.

The Court at Appeal in the case of **DPP Vs. Morgan Maliki and Nyaisa Makori**, Criminal Appeal No. 133/2013, unreported referred to the

case of **Rammahlal Frambaki Bhatt Vs. Republic** [1957] E.A 332 on when can the evidence on record be said to establish a prima facie case had the following to say: -

"so, the principle set at in Bhatt's and MURIMI cases, we think that a prima facie case is made out if, unless shaken, it is sufficient to convict an accused person with the offence with which he is charged or kindred cognate minor one. Which means that this stage the prosecution is expected to have proved all the ingredients of all offence or minor, cognate one there to beyond reasonable doubt. If there is any gap, it is wrong to call upon the accused to give his defence so as to fill it in, as this would amount to shifting the burden of proof"

There is no evidence let a side sufficient evidence to establish a prima facie case against Juma Ally @ Maganga. It would be wrong also an error in law to call upon Juma Ally @ Maganga to defend himself.

The defunct Court of Appeal of East Africa in **Murimi Vs. Republic** [1967] E.A 542 took a position that to put an accused person on defence, when the prosecution has not established a prima facie case is an error. It stated that: -

“The law requires a trial Court to acquit an accused person if a prima facie case has not been made out by the prosecution. If an accused is wrongly called on his defence then this is an error of law.”

Admittedly, with at the prosecution establishing prima facie then is no justification or legal basis for putting the accused on the dock to defend himself.

Having considered the evidence on record as against Juma Ally @ Maganga, I find that he, Juma Ally @ Maganga has no case to answer. I find the evidence does not establish a prima facie case against him to require him to enter defence under section 230 of the Criminal Procedure Act. Consequently, I dismiss the charge and acquit the accused person Juma Ally @ Maganga of the offence of murder Contrary to Section 196 and 197 of the Penal Code [Cap 16 R.E 2019].

It is so ordered.




A.A MRISHA
JUDGE
29/11/2022