THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HCT-00-CR-SC- 021 OF 2013

GERALD MUGENYI KIIZA ..... APPLICANT

VERSUS

UGANDA ..... RESPONDENT

BEFORE: Hon Lady Justice Monica K. Mugenyi

RULING

The accused person, Gerald Mugenyi alias Kiiza, was indicted for the offence of murder contrary to sections 188 and 189 of the Penal Code Act. The brief facts of the case are that on or about the 2nd June 2012 at Mugongo Zone A – Kyengera, Wakiso District, the accused person and others still at large intentionally caused the death of a one Hamida Nazziwa. The accused person pleaded 'not guilty' to the indictment.

The prosecution called two (2) witnesses in support of its case against the accused person – the widower of the deceased (PW1) and the LC Defence Secretary of the locality in which the deceased was murdered (PW2). Both witnesses attested to the deceased's death by strangulation. PW2 further attested to the accused person's participation in the death owing to a one Herbert having seen him (the accused) with the deceased shortly before she died, as well as an admission he made to the witness (PW2) of having killed the deceased in anger. Upon closure of the prosecution case, Ms. Joyce Nalunga for the defence did raise the submission of 'no case to answer'. It was Ms. Nalunga's submission that the essential ingredients of the offence of murder had not been established by the prosecution evidence so as to warrant putting the accused to his defence.

It is trite law that prior to placing an accused person on his/ her defence the prosecution is required to have established a *prima facie* case against such accused person. It is now well established law that a *prima facie* case is established when the evidence adduced is such that a reasonable tribunal, properly directing its mind on the law and evidence, would convict the accused person if no evidence or explanation was set up by the defence. See **Rananlal T. Bhatt v. R. [1957] EA 332**. In that case the Eastern Africa Court of Appeal held that a *prima facie* case could not be established by a mere scintilla of evidence or by any amount of worthless, discredited prosecution evidence.

Be that as it may, in **Uganda vs Mulwo Aramathan Criminal Case No. 103 of 2008** my brother Musota J. further clarified on proof of a *prima facie* case as follows:

> **'A *prima facie* case does not mean a case proved beyond any reasonable doubt since at this stage court has not heard the evidence for the defence.'**

I am most respectfully persuaded by this position.

I have carefully evaluated the prosecution evidence. I find that, in the absence of any explanation to the contrary from the defence, the prosecution evidence does establish the 3 ingredients of the offence of murder. The evidence does establish the fact of death, with the discovery of the deceased's body by the 2 witnesses; it does also establish that the death was by strangulation and therefore unnatural, and finally the fact of strangulation does establish an intention to kill on the part of the deceased's attacker(s). On the question of the accused person's participation, this court finds that, in the absence of any evidence to the contrary, the evidence of PW2 does establish the participation of the deceased. In arriving at the conclusions above I do recognise that at this stage the standard of proof is not proof beyond reasonable doubt as required of a full criminal trial but, rather, such evidence as when taken literally or on the face of it would establish the essential ingredients of the offence of murder, as well as the accused's participation therein.

I therefore find that a *prima facie* case has been established against the accused person for the offence of murder contrary to sections 188 and 189 of the Penal Code Act. The accused person shall be put to his defence. I so order.

Monica K. Mugenyi

Judge

12. 04. 2013