



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION**

HOMICIDE CAUSE NO. 77 OF 2016

THE REPUBLIC

V

LIMBANI WILSON

CORAM: Hon. Justice M L Kamwambe

Salamba of counsel for the State

Chirwa of counsel for the Accused

Amos...Official Interpreter

Chiusiwa ...Court Reporter

RULING ON CASE TO ANSWER

The accused person is answering a charge of manslaughter contrary to section 208 of the Penal Code.

Following the closure of the prosecution case the court is expected to determine whether there is a case to answer for the accused or not. This is covered by section 254 (1) of the Criminal Procedure and Evidence Code. This provision is mandatory. There need not be an application for no case to answer. This process helps to determine at an early stage whether to continue with the case or not. At this stage the prosecution is called to establish a

'prima facie case' which shows that on evidence adduced by the State witnesses there are grounds enough to presume that the accused committed the offence. A submission of case to answer means that a reasonable tribunal, properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defence (see **Criminal Procedure & Evidence Code in Malawi** by David Newman).

The court in **R -v- Dzaipa [1975-77]** 8 MLR 307 and **DPP -v- Champhonda [1973-74]** 7 MLR 94 followed The Practice Direction of Lord Parker as to the meaning of prima facie as follows:

"A submission that there is no case to answer may properly be made and upheld:

- a) When there has been no evidence to prove an essential element in the alleged offence; or*
- b) When the evidence adduced by the prosecutor has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict upon it...*

The decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer."

Facts in evidence are that on 27th June, 2014 at Chibwana village, T/A Nchiramwera in Thyolo district **PW 3** was seated down with his boyfriend in a tea plantation as a man was running towards them. They thought the man was a mere guard doing his own business. They were confronted by the man who had a long knife and he ordered them to sit down. He threatened to harm them if they screamed. The man snatched three phones and some money from them whilst they pleaded with him just to take everything and leave them alone. They were together about an hour. As they tried to run away later, the boyfriend fell down and the pursuing man stabbed him and the boyfriend lost a lot of blood and he died thereafter. **PW3** identified as her phone one of the phones that was found at the house of the accused person. Later when he faced the accused person in court she identified him from the way his eyes looked.

A ruling that there is a case to answer does not require the court to give its opinion or give reasons of its finding from the prosecution's evidence, but may simply record: "Court rules that

the accused has a case to answer in compliance with section 254 (1) of the Criminal Procedure and Evidence Code (**The Republic v Manuel Foster and Issah Kailesi Homicide Cause No. 104 of 2016**).

However, a finding of no case to answer is a matter of law and not fact, requiring the court to give reasons thereto in the form of a judgement in accordance with sections 139 and 140 of the Criminal Procedure and Evidence Code. This is mandatory.

Following on the above, the court finds that there is a case to answer by the accused person and as such he must enter his defence.

Pronounced in Open Court day of 11th day of March, 2019 at Principal Registry, Chichiri, Blantyre.



M L Kamwambe

JUDGE