



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

HOMICIDE CAUSE NO. 191 OF 2017

THE REPUBLIC

V

FORTUNE ISSA

CORAM: Hon. Justice M L Kamwambe

Chitsime of counsel for the State

Panyanja of counsel for the Accused

Amos...Official Interpreter

Mthunzi ...Court Reporter

RULING ON CASE TO ANSWER

The accused person is answering a charge of murder contrary to section 209 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 of the case are that PW2, wife to the deceased went out at night to empty the chamber pot when a person wearing a hood grabbed her and started beating her. The hood went off and she claims to see the face. The suspect was in dread locks. She identified the suspect in his dread locks. She screamed for help and when the husband who was drunk came out she was unconscious. The attacker continued to attack the husband who was badly injured and was taken to Queen Elizabeth Central Hospital here he died. PW2 was also admitted at the hospital. She revealed to police investigators that the suspect she saw lived at Nyirenda's place in Chilomoni. Mr Nyirenda admitted knowing the suspect but that since the night of the incident the suspect surprisingly had not been seen at the house. When the court inquired PW2 said that she had not seen the suspect in 15 years and that she did not know him before and that she saw him for the first time on the night of the attack. In her statement at police she said she knew the guy who stays at Chilomoni and used to meet him at Nthukwa bottle store.

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 18th day of March, 2019 at Principal Registry, Chichiri, Blantyre.



M L Kamwambe

JUDGE