



**Republic v Tum alias Patrick (Criminal Case 28 of 2019)
[2024] KEHC 13238 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13238 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 28 OF 2019
JK SERGON, J
OCTOBER 31, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

BENARD KIPKURUI TUM ALIAS PATRICK ACCUSED

RULING

1. Benard Kipkurui Tum alias Patrick the Accused herein was charged with the information of Murder Contrary to Section 203 as read with 204 of the Penal Code. Particulars of the information dated are that on 7th day of July, 2019 at James Finlay Tea Estate in Mibei Village, Chepkoiben Division within Kericho County, murdered Faith Cherotich.
2. On 23rd July, 2019 the accused person took a plea and pleaded not guilty to the charge of murder. The prosecution called fifteen (15) witnesses who testified in support of its case against the accused herein. The prosecution closed its case.
3. The Learned Counsel representing the accused person urged the court to consider the evidence adduced by the prosecution and determine whether the accused has a case to answer.
4. Mr. Musyoki the Learned Senior Assistant Director of Public Prosecution on his part maintained that the prosecution had established a prima facie case against the accused beyond reasonable doubt.
5. This court has considered the prosecution's case at length. Pw. 1 testified that on the material day the accused pursued her and the deceased while armed with a panga. She said they fled but he caught up with the deceased and assaulted her with the panga. The deceased succumbed to the injuries sustained in the assault. Pw. 9 testified that he saw the accused person stabbing the deceased.
6. Pw. 12 and Pw. 13 being law enforcement officers testified that they instituted criminal charges against the accused following thorough investigations of the events that led to the demise of the deceased.



7. Pw. 14, a medical officer testified that he conducted an autopsy on the deceased's body and formed the opinion that the cause of death was massive internal and external bleeding caused by penetrating chest injury by a sharp object and a cut of the neck.
8. I find that the prosecution witness accounts place the accused at the crime scene and there is direct evidence that on the material day, the accused assaulted the deceased who succumbed to the injuries she sustained as a result of the assault.
9. Having considered the testimonies of the eight (15) prosecution witnesses, the question is whether the evidence tendered establishes a prima facie case against the accused or whether the accused have a case to answer.
10. In Republic v Abdi Ibrahim Owi [2013] eKLR, the court defined a prima facie case as follows: "Prima facie' is a Latin word defined by Black's Law Dictionary 8th Edition as, "sufficient to establish a fact or raise presumption unless disapproved or rebutted". 'Prima facie' is defined by the same dictionary as "the establishment of a legally required rebuttable presumption." whereas in Ronald Nyaga Kiura v Republic, the court held: " It is important to note that at the close of the Prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie case has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the Criminal Procedure Code..."
11. Having considered the material placed before me, I am satisfied that the prosecution has established a prima facie case for the purposes of a finding that the accused has a case to answer.
12. I accordingly place the accused person on his defence under Section 211 of the Criminal Procedure Code CAP 75 Laws of Kenya to be complied with.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 31ST DAY OF OCTOBER, 2024.

J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

S/Counsel – Mr. Musyoki

Accused – Present in Person

No Appearance for Mitei for the Accused

