



**Republic v NJUGUNA & another (Criminal Case 7 of 2019)
[2024] KEHC 13535 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13535 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 7 OF 2019
DO CHEPKWONY, J
OCTOBER 30, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

GABRIEL WAITHAKA NJUGUNA 1ST ACCUSED

JACKIENS GITHAIGA NGUGI 2ND ACCUSED

RULING

1. The Accused persons, Gabriel Waithaka Njuguna And Jackiens Githaiga Ngugi are charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of offence are that:-

“On 18th December, 2018 at Kanjuku area in Kamwangi Division, Gatundu North Sub-county within Kiambu County, the accused persons murdered John Chege Ngugi”.

2. On 4th February, 2019, the accused persons were arraigned in court whereby they were remanded in custody so they could be examined by a Psychiatrist as to the mental ability and assigned counsel to represent them. On 18th February, 2019, the accused persons were confirmed fit to plead and since they had legal representation, the charge was read over and full information thereof explained to the accused persons in Kiswahili language which they understand and each pleaded ‘Not Guilty’ to the offence of Murder.
3. The matter was then set down for hearing which commenced on 11th July, 2019 and the prosecution called fourteen (14) witnesses being Michael Njoroge Chege (PW1), Eunice Njiku Ngugi (PW2), Boniface Gatimu Ngu (PW3), Nahashon Ngugi Mbugua (PW4), Stephen Gicha Chege (PW5), Esther Mugure Maina (PW6), Peter Njau Githuka (PW7), James Marika Njoroge (PW8) George Kibe Waweru (PW9), Richard Munano Gatimu (PW10), Paul Kiritu Kirungi (PW11), No. 74771 CPL



Zawadi Mbuya (PW12), No. 72786 CPL Richard Kipsum (PW13), Dr John Mathaiya (PW14) in support of its case.

4. This Ruling is in respect of whether the accused has a case to answer or not. It is important to start with the definition of what amounts to a prima facie case which was defined by the Court in the case of Republic –vs- Abdi Ibrahim Owl [2013] eKLR as follows: -

“Prima facie” is a Latin word defined by Black’s Law

Dictionary, 8th Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “Prima facie case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with. In Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335, the court stated as follows:

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction.” This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence”. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence...It is may not be easy to define what is meant by a “prima facie case”, 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.”

5. In determining whether the accused persons have a case to answer, the court should ensure that the details of evidence should not be so lengthy to avoid compromising the quality of evidence that the defence will mount. This was discussed in the case of Republic –vs- Stephen Chomba Kamau (2021) eKLR where it was stated:-

“Republic -v- Samuel Karanja Kiria (2009) eKLR Justice J.B Ojwang (as he then was) stated:-

“The question at this stage is not whether or not the accused is guilty as charged but whether there is cogent evidence of his connection with the circumstances in which killing of deceased occurred. That the concept of prima facie case dictates as a matter of law that an opportunity created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled ... The Court of Appeal in Criminal Appeal No. 77/2006 expressed that too detailed analysis of evidence stage at no case to answer stage is undesirable it the court is going to put accused on his defence as too much details in the trial court’s ruling could then compromise the evidentiary quality of the defence to be mounted.” Emphasis added.

6. The court has considered the evidence of all fourteen (14) prosecution witnesses but will refrain from delving into the testimonies of each of the witnesses to avoid compromising the evidence to be adduced by the accused.



7. The court is satisfied that the prosecution has established a prima facie case for the purposes of a finding that the accused persons have a case to answer to the charge of Murder and they are hereby placed on their defence as per the provisions of Section 210 of the Criminal Procedure Code.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 30TH DAY OF OCTOBER , 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:-

Mr. Kiarie counsel for accused persons

M/S Ndeda counsel for the State

Accuseds – Both present

Court Assistant - Martin

