



**Republic v Wamboi (Criminal Case 23 of 2018)
[2023] KEHC 1206 (KLR) (Crim) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1206 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE 23 OF 2018**

**LN MUTENDE, J
FEBRUARY 27, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMUEL MUTHIORA WAMBOI ACCUSED

RULING

1. Samuel Muthiora Wamboi, the Accused, is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Particulars of the information being that on the March 25, 2015 at Muthoa area Dagoretti Division, within Nairobi County, the accused murdered John Abwao Alembi alias Ombogo.
2. At the close of the prosecution's case, based on evidence adduced, this court is required to establish if a prima facie case has been established against the accused requiring him to defend himself. Evidence adduced should be sufficient to justify a conviction in case the accused does not rebut evidence put forward.
3. A prima facie case was defined in the case of *RT Bhatt v Republic [1957] EA 332 – 335* by the Eastern Court of Appeal 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 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 may not be easy to define what is meant by a prima facie, 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.'

4. The question of death having occurred is not in dispute. The cause of death was consistent with assault. According to evidence adduced, the deceased and the accused were at N market- Kabete, when the two boarded a motor cycle and were driven by PW3 Erick Onyita Maguchu to Muthua- Uthiru. PW3 identified the accused as the person who paid the requisite fare for the journey. Subsequently, he saw the deceased injured.
5. PW5 Wycliffe Mayanga Nyamwancha saw the accused and deceased on the motorcycle of PW3. He identified the accused as a person well known to him. Later he was present when the deceased was taken back to the market having sustained injuries. He struggled to give him and others his mother's number and they contacted her.
6. PW1 Desma Musungu, the mother of the deceased, upon arrival found her son injured. They took him to Kikuyu hospital where first aid was administered. The deceased gained his senses and told her what befell him when they left N market. He alluded to a proposal by the accused to sodomize him that he declined, hence the assault which was occasioned upon his person by him jointly with others. This amounted to a dying declaration, evidence that would be sufficient to convict the accused if found to be safe, credible and corroborated, passing the standard of proof with regard to a dying declaration.
7. From the foregoing, I find the prosecution having demonstrated existence of a prima facie case requiring the accused to defend himself pursuant to the requirement of Section 306(2) of the [Criminal Procedure Code](#).
8. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 27TH DAY OF FEBRUARY, 2023.

L. N. MUTENDE

JUDGE

In The Presence Of:

Ms. Ogweni for the State

Mr. Murage for Accused

Accused

Court Assistant – Evance/Mutai

