



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mutethia (Criminal Case 76 of 2016)
[2023] KEHC 1496 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1496 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 76 OF 2016
TW CHERERE, J
FEBRUARY 23, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

GEOFFREY MUTETHIA ACCUSED

RULING

1. Geoffrey Mutethia (accused) is charged with murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the charge are that on May 3, 2015 at Maua Township in Idemba South sub- county within Meru county murdered Douglas Thambura Imuti.
2. The summary of the prosecution case is that on May 4, 2015, deceased was found lying dead in his house with a deep cut on the cervical neck. The first prosecution witness who was deceased's brother did not know how deceased met his death. The 2nd, 3rd, 4th and 5th witnesses who was deceased's and accused's work mates stated that on the night of May 3, 2015, they left deceased and accused at the hotel they all worked and did not know how deceased met his death. The investigating officer stated that accused was suspected of having killed the deceased because he did not report to work on May 4, 2015 when deceased's body was discovered.

Determination

3. I have considered the evidence so far from the prosecution and the issue for determination is whether a prima facie case has been established that warrants calling upon the accused to defend himself.
4. In *Republic v Abdi Ibrahim Owl* [2013] eKLR a *prima facie* case was defined 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 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. The High Court of Malaya in criminal appeal No 41LB-202-08/2013 – *Public Prosecution v Zainal Abidin B. Maidin & another* stated that:

“It is also worthwhile adding that the defence ought not to be called merely to clear or clarify doubts. See *Magendran a/l Mohan v Public Prosecutor* [2011] 6 MLJ 1; [2011] 1 CLJ 805. Further, in *Public Prosecutor v Saimin & Ors* [1971] 2 MLJ 16 Sharma J had occasion to observe:

‘It is the duty of the prosecution to prove the charge against the accused beyond reasonable doubt and the court is not entitled merely for the sake of the joy of asking for an explanation or the gratification of knowing what the accused have got to say about the prosecution evidence to rule that there is a case for the accused to answer.’

6. From the evidence on record, it is apparent that the witnesses do not know who killed the deceased and that accused was suspected only for the reason that he did not report to work on the day deceased’s body was discovered.
7. The issue in question is whether the evidence, though based on suspicion, is sufficient for this court to call accused persons to make a defence.
8. In *Sawe v Rep* [2003] KLR 364 the Court of Appeal held:

“Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.”

9. From the evidence on record, I find that the prosecution has not established a prima facie case upon which this court could convict if no explanation is offered by the defence. It would be an exercise in futility to call upon accused to defend himself for the joy of asking for an explanation or the gratification of knowing what the accused got to say about the prosecution evidence.
10. Accordingly, accused is found not guilty of the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* and it is ordered that he shall be set at liberty unless otherwise lawfully held.

DATED THIS 23rd DAY OF FEBRUARY 2023



WAMAE. T. W. CHERERE

JUDGE

Court Assistant - Kinoti

Accused - Present

For Accused - Mr. Muriuki Advocate

For the State - Ms. Riat (PPC)

