



REPUBLIC OF KENYA



**Republic v Kariuki & 3 others (Criminal Case 35 of 2017)
[2023] KEHC 3470 (KLR) (26 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3470 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CRIMINAL CASE 35 OF 2017
F GIKONYO, J
APRIL 26, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

SIMON KARIUKI 1ST ACCUSED

JAMES KINYUA MWANGI 2ND ACCUSED

ALEX AKOSA SAINA ALIAS ALEKI 3RD ACCUSED

FREDRICK RISA KOSEN ALIAS FREDDY 4TH ACCUSED

RULING

1. The accused herein is charged with the offence of murder contrary to Section 203 as read Section 204 of the *Penal Code*. It is alleged that on February 24, 2017 at Narok Town, Narok North Sub-county within Narok County jointly with others not before court murdered one John Mwaniki Munga.
2. All accused persons pleaded not guilty to the charge. To prove the case against them, the prosecution called and examined a total of fifteen (15) witnesses. Some of the witnesses are relatives of the deceased.
3. At this stage of the proceedings, the court is required to establish whether a prima facie case has been made out to put the accused to their defense.
4. According to the case of *Ramanlal Trambaklal Bhatt V Republic* (1957) EA 332 :-

... It may not be easy to define what is meant by 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 defense.”



5. See also Ojwang J (as he then was) in the case of *Republic vs Karanja Kiria* Cr Case No 13 of 2004 Nairobi [2009] eKLR that:-

“The question at this stage is not whether or not the accused is guilty as charged but whether there is such cogent evidence of his connection with the circumstances in which the killing of the deceased occurred, that the concept of prima facie case dictates as a matter of law that an opportunity be 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 Criminal Appeal No. 77 of 2006, the Court of Appeal expressed that too detailed analysis of evidence, at no case to answer stage is undesirable if the court is going to put the accused onto his defense as too much details in the trial court’s ruling could then compromise the evidentiary quality of the defense to be mounted.”(Emphasis added).

6. Bearing in mind this limitation, I have carefully considered the evidence and it has been established that the deceased died not of natural causes. See the evidence by PW14 -Dr Mutai Kiplangat Titus who conducted a postmortem at Narok County Referral Hospital on the body of the deceased. He produced post mortem report dated 7/03/2017. It was his evidence that the deceased had several bruises on upper and lower limbs and anterior chest wall, visible injury mark on right side of head occipito temporal region 2x3 cm, darkened skin, hands appear swollen, bruises on right foot, no secretions noted from mouth nor nostrils, dissection of right arm hands thighs reveal tissue darkening and clots suggesting soft tissue injuries.. He opined that the cause of death was cardiorespiratory arrest secondary to very severe blunt head injury and several soft tissue injuries possibly inflicted by blunt objects homicide death.
7. There was other evidence by prosecution witnesses- PW2- Samwel Njoroge, PW3-Jane Soipei Munga, PW4- Charles Kisairo Nyandika, PW5-Abaraham karanja Ndungu, PW6- Samwel Gathika Maina, and PW11- Mariko Muunka Kahoi- which connected them to the death.
8. Accordingly, prima facie case has been established against the accused persons which warrants them be put on their defense.
9. By reason of the matter stated herein, the accused persons are hereby put on their defense to exercise their rights under Section 306(2) and 307 of the *Criminal Procedure Code*.
10. The court is also acutely aware of their constitutional right under Article 50 of the *Constitution*; the right to remain silent.
11. The accused person through the advice of their advocates on record are now called upon, if they so wish, to intimate to the court the manner they wish to defend themselves. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 26TH DAY OF APRIL, 2023.

F. GIKONYO M

JUDGE

In the presence of:

- 1. M/s Nkurunah for 1st and 2nd accused person**
- 2. Onduso for 4th accused person**
- 3. Onduso h/b for M/s Maritim for 3rd accused person**



4. M/s Mwaniki for DPP

5. Kasaso C/A

Court Assistant – Mr. Kasaso

