



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Wanjala alias Benard (Criminal Case 29 of 2015)
[2023] KEHC 21627 (KLR) (7 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21627 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 29 OF 2015
RN NYAKUNDI, J
AUGUST 7, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

PATRICK WAFULA WANJALA ALIAS BENARD ACCUSED

RULING

1. The accused herein Patrick Wafula Wanjala alias Benard was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on diverse dates between February 22, 2013 and February 25, 2013 at Maina Sub-location within Elgeyo Marakwet County, murdered Beatrice Jepkosgei Kiprutto.
2. The accused pleaded not guilty to the charge. He was represented at the trial by Mr Miyenda advocate and the prosecution was conducted by Mr Mugun, Prosecution Counsel. The prosecution called a total of five (5) witnesses.
3. Under section 306 of the *Criminal Procedure Code* Cap 75 Laws of Kenya, this Court has a duty, upon close of the prosecution's case, to make a ruling or a decision on whether an accused person has a case to answer or not. Under section 306(1), when the evidence of the witnesses for the prosecution has been concluded and the Court is of the opinion that there is no evidence that the accused person committed the offence should, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.

Analysis & Determination

4. Under section 306(2) on the other hand, when the evidence of the witnesses for the prosecution has been concluded and the Court is of the opinion that there is evidence that the accused person committed the offence, the court should proceed to put the accused to his defence and whereby the accused is supposed to present evidence in his defence.



5. It was expected of the prosecution to discharge a wholesome burden as envisaged in section 107 (1) of the Evidence Act which states that; -
 - 1) Whoever desires any Court to give judgement as to any legal right or liability is dependant on the existence of facts which he asserts must prove those facts exist.
 - 2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
6. It is trite as expressly stated in the cases of *State Vs Ramadhan Chin Shue* HCA No 104 of 1997 and *Sanjib Chaittal V The State* [1985] 39 WLR *Bhatt V R* [1957] EA 332 that; -

“A submission that there is no case to answer may properly be made and upheld (a) when there has been no evidence adduced by the prosecution to prove essential elements in the alleged offence (b) With the evidence adduced by the provision has been so discredited that no reasonable tribunal could safely convict on it.”
7. In addition, in the case of *Uganda V Mulwa Aramathan* Criminal Case No 103 of 2008 the Court stated that: -

“A prima facie case does not mean a case proved beyond any reasonable doubt since at this stage, Court has not heard the evidence for the defence.”
8. At this stage, the court is not expected to make any finding on the guilt of the accused person but to assess the evidence and determine whether the accused person, on the material placed before the court should be called upon to give their defence to the charge. This is so because giving reasons for a finding that an accused person has a case to answer would be prejudicial to an accused person, hence such a determination if arrived at must be made without giving reasons. In *Ronald Nyaga Kiura vs Republic* [2018] eKLR wherein paragraph 22 it is stated as follows:

“It is important to note that at the close of 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. A *prima facie* case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person. This is well illustrated in the cited Court of Appeal case of *Ramanlal Bhat Vs Republic* [1957] EA 332. At that stage of the proceedings the trial court does not concern itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence.”
9. However, having considered the evidence as adduced by all the prosecution witnesses and as a whole, I am satisfied that the prosecution has established a *prima facie* case against the person to warrant him being placed on their defence. As to whether the said evidence on record meet the threshold for convicting the accused persons is a matter that will have to be considered at the end of the trial.
10. Accordingly, I order that the accused person Patrick Wafula Wanjala alias Benard shall tender his defence in this case. The provision of Section 306 (2) and (3) of the Criminal Procedure Code is hereby



complied with by calling upon the accused person to elect what mode of defence they wish to tender before the court.

11 It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 7TH DAY OF AUGUST 2023

IN THE PRESENCE OF

MR. MUGUN FOR THE STATE

.....

R. NYAKUNDI

JUDGE

