



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mwangi & 3 others (Criminal Case 3 of 2017)
[2022] KEHC 653 (KLR) (31 March 2022) (Ruling)**

Neutral citation: [2022] KEHC 653 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL CASE 3 OF 2017
LW GITARI, J
MARCH 31, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

BENSON NJAGI MWANGI 1ST ACCUSED

ANTHONY MUGENDI 2ND ACCUSED

RUEBEN MUTEMBEI 3RD ACCUSED

ERIC MAWIRA KITHOME 4TH ACCUSED

RULING

1. The accused persons herein were charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* (Chapter 63 of the Laws of Kenya). It is alleged that on 13th May 2017 at Kamonka Village, Kamonka Sub-location, Mutimo Location within Tharaka-Nithi County the accused persons, jointly with others before court murdered one Silas Muthomi Muriungi.
2. Each of the accused persons denied the charge and the matter proceeded to trial. The prosecution called a total of five (5) witnesses before it closed its case on February 16, 2022.
3. At this stage, the question for this court to determine is whether the prosecution has made out a prima facie case against the accused persons sufficient enough to warrant this court to put them on their defence pursuant to the provisions of Section 306(2) of the *Criminal Procedure Code*. In other words, the decision to be made by this court is whether the prosecution's case, on its own, may possibly, though not necessarily, succeed.



Section 306(2) of the Criminal Procedure Code provides:

“(2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.”

4. Several authorities have established what constitutes a prima facie case. The leading authority is the case of *Ramanlal T. Bhatt v Republic* [1957] EA 332 where the court defined a prima facie case as one which a reasonable tribunal properly addressing its mind to the law and evidence, could convict if no explanation is offered by the defence.
5. In the instant case, this court has the duty to evaluate the testimony of each of the five (5) prosecution witnesses against the charge of murder as it touches on the accused persons. I confirm I have carefully considered the testimonies of the said witnesses and exhibits produced in court, it is my view that the said evidence meets the threshold that was set out in the case of *Bhatt -v- R* (supra) in respect of determining whether an accused has a case to answer.
6. At this stage, no reasons need to be given for this finding as this court is yet to hear the explanations of the accused persons and giving reasons would amount to determining the case without giving them an opportunity to be heard (See: *Republic -v- Samuel Karanja Kiria* [2009] eKLR).
7. It is therefore sufficient at this stage to inform the accused persons whether they have a case to answer and give them a chance to be heard.

Conclusion:

8. Upon considering the evidence tendered by the prosecution, I find that the accused have a case to answer and will proceed as provided under Section 306(2) of the Criminal Procedure Code and (supra).

DATED, SIGNED AND DELIVERED AT CHUKA THIS 31ST DAY OF MARCH 2022.

L.W. GITARI

JUDGE

31/3/2022

The ruling has been read out in open court.

L.W. GITARI

JUDGE

31/3/2022

