



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Kimathi (Criminal Case E014 of 2020)  
[2022] KEHC 421 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 421 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE E014 OF 2020  
TW CHERERE, J  
APRIL 28, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**FRANCIS GITONGA KIMATHI ..... ACCUSED**

**RULING**

1. Francis Gitonga Kimathi (Accused person) is charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*.

The particulars of the charge are that on 5<sup>th</sup> May 2018 at Mwembene village, Amwathi to sub-location, Kabachi location, in Igembe North Sub-County within Meru County jointly with others not before court murdered Isaiah Mugambi

2. Accused denied committing the offences and the prosecution called a total of five (5) witnesses in support of their case. Upon the prosecution closing its case this court has to determine whether or not the prosecution has established a prima facie case against the accused. In *Republic vs. 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”.

3. The evidence contained in the Postmortem form tendered as PEX1 reveals that the deceased died as a result of cardiopulmonary arrest due to multiple chest and abdominal stab wounds.



4. The question is whether the Accused is guilty of inflicting the stab wounds upon the deceased? PW1 Benard Mwitia cousin to the Accused did not witness the incident that led to the deceased's death but was informed that it was one Mwit, Kimathi and the Accused who stabbed him. PW2 Joshua Kailiba a neighbor of the deceased testified that he saw one Mwit and Kimathi chase the deceased with the Accused following at a distance with a rungu and when the deceased fell to the ground it was Mwit who stabbed the deceased, and that the Accused confronted Mwit for killing the deceased and he had to separate them. He stated that Accused had only a rungu which he never used on the deceased but attempted to beat Mwit who had killed the deceased. PW3 Peter Kirianyoni uncle to the Accused testified he saw one Mwit stab the deceased and the Accused had a rungu but he did not hit the deceased. PW4 Mary Nyambura testified that she saw Mwit son of Kimathi stab the deceased and the Accused arrived at the scene holding a stick but he never assaulted the deceased. PW5 Fredrick Pete NO 90556 testified that on 8<sup>th</sup> and 9<sup>th</sup> May 2018 he recorded statements of witnesses who implicated the Accused. On cross-examination by counsel for Accused he was surprised that all the prosecution witnesses had implicated one Mwit and not the Accused who they testified was only armed with a rungu.
5. In *Ramanlal Trambakal 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 is 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.”
6. The court record demonstrates that there is no evidence, irrespective of its credibility or weight, sufficiently implicating Accused in the commission of the actions that led to deceased's death.
7. Section 306 of the *Criminal Procedure Code* provides inter alia:
  1. When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, 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.
8. From the foregoing analysis, I hereby enter a verdict of not guilty and acquit the Accused under section 306 (1) of the Criminal Procedure Code. Accused shall be at liberty unless otherwise lawfully held.

**DATED THIS 28<sup>TH</sup> DAY OF APRIL 2022**

**WAMAE. T. W. CHERERE**

**JUDGE**

Court Assistant - Kinoti



Accused - Present

For the Accused - Mr. Kaaria Advocate

For the State - Ms. Mwaniki

