



Republic v Njoroge (Criminal Case 13 of 2016) [2022] KEHC 425 (KLR) (28 April 2022) (Ruling)

Neutral citation: [2022] KEHC 425 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 13 OF 2016**

TM MATHEKA, J

APRIL 28, 2022

BETWEEN

REPUBLIC PROSECUTION

AND

STEPHEN KINUTHIA NJOROGE ACCUSED

RULING

1. The Accused Person, Stephen Kinuthia Njoroge, is charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged that on the 27th February, 2016 at Kirima Farm, Solai in Nakuru North District within Nakuru County, he murdered Paul Mwiko Njoroge.
2. On 11th March, 2016, the charge was read to the accused person and he pleaded not guilty and the trial commenced. The prosecution called Seven (7) witnesses in support of its case.
3. PW1, Sofia Wangui, neighbor to the accused person, recalled that on 27th February, 2016 at around 10.00p.m she had taken her children to the latrine. While there she heard commotion at her neighbor's, Njoroge Mwiko's place and it sounded like they were fighting. She asked her son Geoffrey Chege to come with her so that they would check what was happening. On arrival, it was dark. There was no one outside, she knocked on the door and there was no response. Then someone asked who it was. When she identified herself as Mama Ciru, Kinuthia Stephen opened the door for her. It was dark inside. She put on her phone torch. She saw blood on the floor; tables turned upside down, broken stools and Paul was lying on the seat with blood on his face.
4. She asked Kinuthia why he had injured Paul. Kinuthia told her that the deceased was loved too much by their father and had refused to pay a debt he owed Kinuthia. In her presence Kinuthia took the top of a stool and threw it at Paul's face. She asked the accused person whether he wanted to kill the deceased. He told her he was not afraid of prison. She warned him not to hit Paul again. She told Paul to get up so that they would leave. Paul got up but Kinuthia kicked him in the stomach. Paul fell back onto the sofa and slept. He searched Paul's pockets. He was looking for his phone to call their father.



When he did not get the phone he asked the witness for hers. She gave him, he called the father and told him that he had fought

with Paul, and Paul was injured. He wanted the father to come and check on him. His mother one Nyambura called back tried to speak to Paul. They then left with Stephen because the witness did not want to leave him with Paula and wanted to call her husband to come check on Paul. Her husband was drunk. So Kinuthia went to ask a neighbour one Wagaki whether his father had called him. Wagaki said no. Wagaki, Kinuthia and the husband to witness who they woke up all went to check on Paul. She did not accompany them. She said that while she was there she never saw Paul hit Kinuthia.

5. On Cross examination she said she did not know whether the two were drunk. That she had earlier seen Kinuthia and he was sober. That the house where the fight took place was their father's house. That Stephen hit Paul on the head, then kicked him in the stomach.
6. PW2, Peter Njoroge Muiko, father to both Kinuthia and Paul testified that on 27th January 2016 at about 10.30 P.M while at Nakuru Town he received a phone call from a concealed number. It was the voice of his son Stephen. He told him that his brother Paul had angered him, they had fought, he Stephen had injured him, and he, the father to go deal with it then in anger, switched off the phone.
7. He called his neighbor Mwangi Macharia to go to his home and check on his sons. Mwangi went and called him from there telling him that he had found Paul with serious injuries on the head, was bleeding and had a swollen eye. He called another neighbor Samuel Waithagu (now deceased) who had a motor vehicle to transport Paul to Maili Kumi Hospital where he, the witness would meet them.
8. He met them at Maili Kumi hospital they went to the police station and reported the matter and was issued with an OB. Thereafter they left for Bahati District Hospital where Paul got first aid and they were referred to Nakuru Provincial General Hospital where he was admitted. The following day at 8 a.m. when he visited he noted that Paul was getting worse and so he requested to have him transferred to Annex Hospital. This only happened by noon but when he got to Annex Hospital they were told he was already dead. He had the body moved to Nakuru War Memorial Mortuary.
9. He testified that Paul and Stephen were his children. Stephen was quarrelsome. Would take things without permission. Like this time, he had sold murrum without permission, but Paul had requested to sell two trailers from the quarry. He had allowed him to do so. That seems to have caused a quarrel when Stephen went to demand the money. That Stephen had previously broken Paul's leg with a piece of wood and Paul had forgiven him. That though the two would fight, he had never seen Paul injure Stephen. They both took alcohol. PW3, Mwangi Macharia testified that on the material night he between 10 -11pm while sleeping in his house, he was called by PW2 who told him that his two sons had fought and one was injured, he requested him to go and check on the injured one. He got up and left and met Kinuthia and PW1 Mama Ciru. Kinuthia asked him whether his father had rang him and he confirmed that. They went together to Mwiko's home but mama Ciru left them and went to her home.
10. Upon arrival PW3 noted that there was blood in the house on the floor, on the seats. It was in shambles where there broken stools, and everything, was broken. There were no lights. Paul was not in the sitting room. A search led them to the bathroom where he was found vomiting into a bucket. His head was bleeding profusely. There was blood all over his hands, face.
11. He found a cloth and wiped him. Paul requested to go to the toilet. PW3 led him to the toilet. They waited for him outside and



- when he took too long PW3 asked Kinuthia to check on him. He said it was not unusual. PW3 went to check on him and found he had collapsed in the toilet.
12. They took him out and cleaned his bleeding wounds with salt water which Kinuthia prepared. Paul was screaming telling Kinuthia: you are my brother and you want to kill me! Kinuthia responded If I kill you I will bury you, if you kill me You will bury me. The cleaning with salt water stemmed the bleeding.
 13. They changed his clothes as they waited for transport to take him to hospital. He was still vomiting. When the m/v came the Driver and one Nuthu took him to hospital. He stated that Kinuthia told him he and Paul fought but Kinuthia did not have injuries.
 14. PW4 - Dr. Daniel Wanaina, chief officer health services at Nakuru County, registered medical practitioner no. A5828, testified that on 3rd March 2016 at noon, he conducted a post mortem examination on the body of Paul Mwiko Njoroge at Nakuru War Memorial Mortuary. Externally, there were multiple minor cuts and bruises on the face. 2 long cuts, 5 cm each on the left temporal and occipital region of the scalp, bruises on chest wall and interior abdominal minor cut on the front left leg.
 15. He said internally, there was rupture of the intestines. Head and skull fracture bleeding into cranial cavity and swollen brain. He formed an opinion that the cause of death was as a result of severe head injury skull fracture, multiple blunt trauma injuries and blunt abdominal trauma. He drew the conclusion that this was a homicide. On cross examination he stated that he was a registered medical doctor and not pathologist. On re-exam he said that he was qualified to perform post mortem examination.
 16. PW5- Simon Kimani Kamau recalled that on 3rd March 2016 at around 9.00am-11. 00a.m in company of his cousin David Kimani Njoroge, went to war memorial mortuary and identified the deceased's body for postmortem.
 17. PW6- no. 79119 CPL Benard Koech Lagat recalled that
on 1st March 2016 while at Solai police station one Peter Njoroge Mwiko made a report that on 27th February 2016 at around 2240 hours, he received a call from his son Stephen Kinuthia Njoroge that he had assaulted his elder brother, and that he should organize to take him to hospital. He arranged for transport to take the deceased to the hospital but unfortunately died while undergoing treatment at Nakuru Provincial General Hospital. In company IP Muraya, PC Mutula, PC Driver Ng'ang'a he proceeded to the home of Peter Njoroge. Upon arrival he found broken tea tables and blood stains within the sitting room. He produced the broken table pieces as P. Exhibit 2 a, b, c, d, e, & f.
 18. They arrested the accused person
 19. On cross examination he was referred to the exhibits he could not recall which one had blood stains.
 20. PW7- no 235695 Police Inspector Stephen Muraya recalled that on 1st of March 2016 he received a call from OCS, CI Zakayos Wakhungu at 11.00 a.m concerning the homicide case at River Farm in Solai Location, and was directed to lead the investigations. In company of Corporal Benard Koech, PC Mutura he proceeded to the scene of the homicide. Upon reaching there he saw scattered sofa sets, coffee tables, blood on the walls and floor. In the bedroom he found blood stained shirt & a trouser. He produced broken coffee tables and ash tray, blood stained checked shirt and Grey Trouser as exhibits.
 21. He recorded the suspect's statement under inquiry. charged the accused person with murder based on the results of the postmortem and the evidence of PW1. On cross examination he



- stated that he did not establish whether the blood on the shirt belonged to the deceased.
22. The prosecution closed its case.
 23. The only issue is whether the prosecution has established prima facie case to warrant the accused person being put on the defence.
 24. Section 306(1) of the [Criminal Procedure Code](#) provides for what should happen at the Close of case for prosecution
 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.
 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.
 25. In *Ramanlal Trambaklal Bhatt v Republic* (1957) EA 332 a *prima facie* case was defined as follows: -

Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot argue that a prima facie case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction..... 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 defence.
 26. Having considered the foregoing evidence, I am of the view that a prima facie case has been made against the accused person to warrant his being put on the defence as per Section 306(2) of the [Criminal Procedure Code](#).

DATED, SIGNED AND DELIVERED THIS 28TH APRIL 2022

MUMBUA T. MATHEKA J

CA Edna

Accused Present

Mr. Murunga for Accused Mr. Kihara for state

