



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BOMET**

**CRIMINAL CASE NUMBER 18 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**WILITHA CHEPNGETICH CHEPWONY.....ACCUSED**

**RULING**

1. The Accused was charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge were that on the 20<sup>th</sup> day of September 2018 at Olnghoswet village, Longisa sub location within Bomet County jointly with others not before court murdered Bernard Kipngetich Yegon.

2. She pleaded not guilty to the charges, and to prove the case against her, the prosecution called a total of eleven (11) witnesses before closing its case.

3. At this stage of the proceedings what the court is required to do is to establish whether a *prima facie* case has been established. In the case of **RONALD NYAGA KIURA VS. REPUBLIC (2018) eKLR** Limo J. 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 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.”*

4. To sustain a conviction on a charge of murder, the prosecution is under both legal and evidential obligation to prove certain ingredients of the offence. The case of **ANTHONY NDEGWA NGARI VS REPUBLIC (2014) eKLR**, listed the elements of the offence of murder as follows:-

(a) the death of the deceased occurred;

(b) that the accused committed the unlawful act which caused the death of the deceased; and

(c) that the accused had malice aforethought.

5. In the case of **REPUBLIC V ROBERT ZIPPOR NZILU (2020) eKLR**, Odunga J held that:

*“That there is a danger in making definitive findings at this stage, especially where the Court finds that there is a case to answer is not farfetched and the reasons for not doing so are obvious. As was appreciated by Trevelyan and Chesoni, JJ in FESTO WANDERA MUKANDO VS. THE REPUBLIC (1980) KLR 103:*

*“we once more draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgement. Where a submission of “no case” is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the count or counts concerned.”*

6. Additionally, in the case of REPUBLIC V JUSTUS KOROBEL NGIKUNO (2021) eKLR, Wakiaga J stated that:

“Justice J.B. Ojwang as he then was in the case of REPUBLIC v KARANJA KIRIA CR.CASE NO.13 OF 2004 NAIROBI [2009] eKLR had this to say on prima facie case:-

*“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 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 defence as too much details in the trial court’s ruling could then compromise the evidentiary quality of the defence to be mounted.”*

7. I have considered the evidence already on record and the undated written submissions from the Prosecution. I am satisfied that the prosecution has established a *prima facie* case against the accused.

8. It is my finding that the Accused has a case to answer and is called upon to elect his mode of defence in accordance with Section 306 of the Criminal Procedure Code.

9. Orders accordingly.

**Ruling delivered, dated and signed at Bomet this 28<sup>TH</sup> day of April, 2022.**

.....

**R. LAGAT-KORIR**

**JUDGE**

**Ruling Delivered in the presence of the Accused, Ms. Boyon holding brief for Mr. Muriithi for the State, Ms. Chepkemioi for the Accused, and Kiprotich (Court Assistant)**