



**Republic v Kivua (Criminal Case 25 of 2016)  
[2022] KEHC 13340 (KLR) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13340 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CRIMINAL CASE 25 OF 2016  
RL KORIR, J  
SEPTEMBER 28, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOSEPH NTHEU KIVUA ..... ACCUSED**

**RULING**

1. The accused was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the charge were that on the June 16, 2016 at boarder area in Kipsitet location within Soin/Sigowet Sub-County in Kericho County, murdered one Charles Mugambi.
2. The accused was arraigned before Mumbi Ngugi J, and pleaded not guilty to the charge. The case went into full trial before Muya J, in which the prosecution called a total of 9 witnesses and produced 12 exhibits in support of its case. I heard the last 2 witnesses.
3. At the close of the prosecution case, the court invited the parties to submit on whether or not the prosecution had established a *prima facie* case against the accused.
4. The state submitted that it had clearly established a *prima facie* case. They submitted that the evidence of PW1 placed the accused at the scene while PW6 demonstrated that the gunshot wounds from which the deceased died were occasioned by the bullets fired from the firearm (Exh.1) issued to the accused.
5. The defence on the other hand did not submit at the close of the prosecution case.
6. At this juncture, the court is not required to analyse the prosecution evidence in depth. The court must however consider the evidence laid out as against the ingredients of the charge and form an opinion whether or not the evidence discloses a *prima facie* case against the accused. This circumscription was



clearly explained by Ojwang J, (as he then was) in the case of *Republic Vs. Samuel Karanja Kiria CR Case No 13 of 2004* Nairobi [2009] eKLR where he stated thus:-

“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 Court of Appeal 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 prosecution evidence and their submissions now on record. I have come to the conclusion that the evidence discloses a *prima facie* case against the accused. In arriving at this finding, I have borne in mind the definition of a *prima facie* succinctly stated by the Court of Appeal in *Ramanlal trambaklal vs. Republic* (1957) EA 332 thus:

“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. This is perilously near suggesting that the court could not be prepared to convict if no defense is made, but rather hopes the defense will fill the gaps in the prosecution case, nor can we argue 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 defense.”

A mere scintilla of evidence can never be enough nor can any amount of worthless discredited evidence... 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 defense.”

8. The accused has a case to answer and I invite him to elect his mode of defence in accordance with section 306 of the [Criminal Procedure Code](#).

Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2022.**

.....

**R. LAGAT-KORIR**

**JUDGE**

**Ruling delivered in the presence of Mr. Njeru for the State, Ms.Chepkemai holding brief Mr. Langat for the accused and Kiprotich (Court Assistant).**

