



**Republic v Mwakio (Criminal Case 8 of 2018)
[2022] KEHC 14527 (KLR) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14527 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL CASE 8 OF 2018
JN ONYIEGO, J
OCTOBER 28, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

BONIFACE MWAKIO ACCUSED

RULING

1. The accused person herein was on December 7, 2018 charged with the offence of murder contrary to Section 203 as read with Section 204 of the [penal code](#). Particulars are that on the night of November 27, 2018, at Mwanga village in Ronge sub location within Taita Taveta County murdered one Mwangesha Mwamburi. Accused having understood the charge returned a plea of not guilty.
2. In its endeavor to discharge the onerous duty of proving a case beyond reasonable doubt, the state called a total of nine witnesses. At the close of the prosecution case, parties were directed to file their respective submissions on whether the accused has a case to answer or not.
3. Pw1 Patrick Maganga told the court how he visited Mwakio the accused herein at his home on the November 28, 2018. That he found the accused with one Mshimba seated outside. He stated that he heard accused telling Mshimba how he (accused) had assaulted his father after the said father attempted to sodomize him. He however did not bother to see mwakio's father as the three left for the farm to harvest coconut. That it was on the following day he received information that Mwakio's father was found dead in the house.
4. Pw2 Nancy Marura chairlady nyumba kumi stated that on November 28, 2018, accused went to her shop and disclosed how he had assaulted his father after he attempted to sodomize him the previous night. That she called one Beatrice a village elder whom she directed to visit the deceased's home to resolve the differences between Mwakio and the father. She told the court that on the following day, Beatrice (Pw3) confirmed to her that Mwangesha (deceased) had died. She visited the scene and



confirmed that the old man had indeed died and that he had a stab wound on the neck. She later called the Ass -chief and the local chief who in turn called the police Mwatate police station to collect the body.

5. Pw3 Beatrice Mkiwa Nguru confirmed that on November 28, 2018, she was requested by Pw2 to go and visit the deceased's home to confirm the report given by Mwakio (accused). She told the court that when she visited the accused's home, she found Mwangesha his father lying on his bed while dead. That it was the accused who disclosed how he had assaulted his father after he (deceased) attempted to sodomize him.
6. Pw 4, Pw5 and Pw6 confirmed visiting the deceased's home and found him dead while Mwakio allegedly admitted that he was the one who had assaulted him.
7. Pw7 IP Kyalo scenes of crime visited the scene and took photographs reflecting various injuries on the face, left Ambit and the head. Pw8 Pc Apolo Njenga investigated the matter and preferred charges.
8. Pw 9 Doctor Joyner Wali, produced a post mortem report on behalf of Doctor Njumwa confirming the injuries sustained as multiple stab wounds on the face and right mandibular; multiple rib fractures; bruises on both elbows; multiple skull fractures; and perforated right and left lung tissues. She told the court that the cause of death was severe head and chest injuries secondary to blunt force trauma.
9. After the closure of the prosecution case, parties submitted on whether the prosecution had established a *prima facie* case or not. According to the prosecution, accused was responsible for the deceased's death while the defence maintained that there was no evidence connecting the deceased's death with the accused
10. I have considered the evidence tendered by the prosecution and submissions by counsel. At this stage, the court is duty bound to make a finding whether the evidence tendered by the prosecution is sufficient enough to warrant accused being call upon to respond to the charge of murder thereby tendering his defence.
11. It is incumbent upon the prosecution to prove that they have established a *prima facie* case which is not necessarily proof beyond reasonable doubt. See *Ramanlal Trambaklal Bhatt V Republic* (1957) EA 322 where the court stated that the onus is on the prosecution to prove its case beyond reasonable doubt and a primafacie case is not 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.
12. Equally, in the case of *Republic vs Rafiki Chibunja Karisa & 2 others* (2020) e KLR the court held as follows;

“ in this case the burden on a prima facie case to be shown by the prosecution according to Lord Denning is consistent with the proposition that the degree need not reach certainty but it must carry a high degree of probability but not beyond reasonable doubt, that there exists evidence which can sustain a conviction”
13. At this stage, the court is concern with evidence which has a bearing to the probability of the accused's involvement in the death of his father and not proof beyond reasonable doubt. From the post mortem, the cause of death was head and chest injury secondary to force trauma. The medical report further reveals that the deceased had sustained severe head, chest, neck, and ribs injuries all of which have a bearing to the cause of death. Obviously, the injuries were not self-inflicted hence the possibility of foul play or human involvement.



14. Who then was responsible and was there malice afore thought as defined under section 206 of the [penal code](#). From the evidence of Pw 1, Pw2 Pw3, Pw4 and Pw5, it was the accused who volunteered information to them stating that he had beaten his father for attempting to sodomize him. Indeed, Pw2 Pw3 Pw4 and Pw5 confirmed that at the material time, the deceased and the accused were the only people living and sharing the house in which the deceased was found dead.
15. From the circumstances surrounding the death of the deceased, there is some probability that the accused may be connected with the death of the deceased and therefore the reason for the accused to be call upon to tender his defence to state his part of the story if he so wishes to do so.
16. In view of the above, I am satisfied that the prosecution has established a *prima facie* case against the accused and accordingly, accused is hereby put on defence.

Dated, signed and delivered at Mombasa this 28th day of October, 2022

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J. N. ONYIEGO

JUDGE

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