



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kirui (Criminal Case 26 of 2018)
[2022] KEHC 17013 (KLR) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 17013 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 26 OF 2018
RL KORIR, J
NOVEMBER 30, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

GEOFFREY KIPLANGAT KIRUI 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 October 15, 2018 at Sakaltit village in Kapkimolwa location in Bomet County within Bomet East murdered Samuel Chumo.
2. On November 2, 2018, the Accused took plea before Muya J and pleaded not guilty. The case went into full trial in which the prosecution called a total of nine (9) witnesses before closing their case on July 28, 2022.
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 *Ramanlal Trambaklal Bhatt v Republic* (1957) E A 332, the Court held that:-

“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 defence is made, but rather hopes the defence 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 defence.”

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 defence.”

(See also [Republic v Abdi Ibrahim Owl \(2013\) eKLR](#))

4. In analysing the evidence at this stage, I am not expected to give a detailed analysis and arrive at a firm finding on the guilt of the Accused. I agree with the caution in [Republic v Robert Zippor Nzilu \(2020\) eKLR](#), where Odunga J (as he then was) stated 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 v 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.”

5. Further in the case of [Republic v Samuel Karanja Kiria \(2009\) eKLR](#), JB Ojwang J (as he then was) restated the importance of not compromising the quality of the defence by a detailed analysis at this stage. His Lordship held:-

“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.” (Emphasis added).

6. This case proceeded before Muya J who recorded the evidence of six (6) witnesses while I heard the last three (3) witnesses. I have carefully considered the evidence on record including the exhibits. The Prosecution filed written submissions dated October 18, 2022 and the Accused’s defence counsel also filed written submissions dated October 17, 2022. Both submissions were quite helpful to the court and I have taken them into consideration. From my analysis of the evidence and submissions now on record, I am satisfied that the Prosecution has established a prima facie case against the Accused.

7. It is my finding that the Accused has a case to answer. He is called upon to elect the mode of his defence in accordance to Section 306 of the [Criminal Procedure Code](#).

8. Orders Accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 30TH DAY OF NOVEMBER, 2022.

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R LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Ms Chemutai holding brief Mr Koske for the Accused, Mr Njeru for State, and Kiprotich (Court Assistant)

