



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Koech (Criminal Case 11 of 2018)
[2022] KEHC 15576 (KLR) (21 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15576 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 11 OF 2018
RL KORIR, J
NOVEMBER 21, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

PETER CHERUIYOT KOECH ACCUSED

RULING

1. The accused person was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*, cap 63 Laws of Kenya. The particulars of the offence were that on the June 27, 2018 at Samituk sub-location in Cheboin location within Bomet county, murdered Robert Kipkoech Chemurwok.
2. The accused person took plea on July 12, 2018 before Muya J and pleaded not guilty to the charge of murder. The prosecution called ten (10) witnesses who testified in support of their case. The prosecution's case was that accused person murdered his 90-year old father (the deceased) by slashing him with a panga on the neck.
3. On October 28, 2022, the Prosecution filed its submissions dated October 27, 2022 on case to answer. They submitted that their evidence proved Robert Kipkoech Chemurwok's death, that the said death was caused by the deceased based on the testimony of their witnesses and the fact that the murder weapon was found in his house. Further, that the deceased voluntarily surrendered himself to the police station and confessed to committing the crime. Lastly, that there was malice aforethought as demonstrated by the injuries inflicted on the deceased person.
4. I have considered the evidence and the exhibits presented by the Prosecution before this Court. Section 107 (1) of the *Evidence Act* cap 80 of the Laws of Kenya provides that: -
Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove those facts exist.



5. This burden of proof in a criminal trial is vested in the prosecution. For the charge of murder to succeed, each ingredient of the offence namely death and cause thereof and malice aforethought must be proved beyond reasonable doubt. (See HL (E)* Woolmington v DPP [1935] AC 462 pp 481).
6. It is therefore the duty of this court to consider whether a prima facie case has been established against the accused person at the close of the prosecution's case. Section 306 of the Criminal Procedure Code states thus: -
 - (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 recording 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 on his own behalf or make unsworn statement and to call witnesses in his defence.....
7. Black's Law Dictionary, 8th Edition defines a prima facie case as:-

“Sufficient to establish a fact or raise a presumption unless disproved or rebutted.”
8. In Ramanlal Trambaklal Bhatt v R [1957] EA 332 at 335, the Court of Appeal aptly explained a *prima facie* case as follows:-

“Remembering that the legal onus is always on the Prosecution to prove its case beyond reasonable doubt, we cannot agree that a *prima facie* case is made out if, at the close of the prosecution's case, the case is merely one in which on full consideration might possible be thought sufficient to sustain a conviction.”

This is perilously near suggesting that the court would 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 agree that the questionthere 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 a, ‘prima facie case’, but at least it must mean one on which a reasonable, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”.
9. This court is expected to merely scrutinize the evidence and determine if a case has been made out at this stage. A well-reasoned decision as to the guilt or innocence of the accused person is a preserve of the judgement, should the accused be placed on his defence. [See Ojwang J's decision (as he then was) in Republic v Karanja Kiria, Criminal Case Number 13 of 2004, Nairobi (2009) eKLR].
10. Thus, I have taken into consideration the evidence of the Prosecution in totality against the three ingredients of the offence of murder. It is my finding that the Prosecution established a *prima facie* case and accordingly, the accused has a case to answer. The accused is hereby placed on his defence.
11. Orders accordingly.



RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 21ST DAY OF NOVEMBER, 2022.

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R. LAGAT-KORIR

JUDGE

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

