



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Rotich (Criminal Case 21 of 2018)
[2022] KEHC 15578 (KLR) (21 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15578 (KLR)

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

BETWEEN

REPUBLIC PROSECUTOR

AND

KELVIN KIMUTAI ROTICH 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 4th day of October 2018 at Yaganek location in Sotik Sub County within Bomet County murdered Samuel Chumo.
2. On October 11, 2018, the Accused pleaded not guilty and the case went into full trial in which the prosecution called a total of eight (8) witnesses before closing their case on October 4, 2022. The court required parties to file submissions by November 14, 2022 but none of the parties complied.
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 where 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. 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 vs 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 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.”

5. In the case of Republic vs Justus Korobei 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.”

6. This case proceeded before Muya J. who recorded the evidence of five (5) witnesses while I heard the last three (3) witnesses. I have carefully considered the evidence on record including the exhibits and 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 21ST DAY OF NOVEMBER, 2022

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R. LAGAT-KORIR

JUDGE

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

