

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

MURDER CASE NO. 17 OF 2016

REPUBLICPROSECUTOR

– VERSUS –

JOSEPH MWANIKI KARIUKI ACCUSED

RULING

1. The accused person Joseph Mwaniki Kariuki was charged with murder contrary to **Section 203 as read with 204 of the Penal Code**.
2. The particulars of the offence were that on the 9th day of April 2016 at Kagumo Shopping Centre, Kerugoya within Kirinyaga County, he unlawfully murdered George Njagi Njiru.
3. He denied the charges and the prosecution summoned a total of ten witnesses in support of its case.
4. This is a ruling as to whether the accused has a case to answer.
5. At the close of the prosecution's case both prosecution counsel and counsel for the accused person filed written submissions. It is upon the court to determine whether the prosecution has produced sufficient evidence to establish a prima facie.
6. The defence in their submissions dated 18.05.2020 submit that no one saw the accused person beat the deceased, they rely on the case of **Albert Tirimi Ogata vs Republic No.27/2010** that held that the intention to kill or cause grievous harm must be proved. They submitted that the prosecution's case failed to adduce evidence on the intention to murder the deceased.
7. The prosecution in their submissions dated 21.05.2020 submitted that the 4 elements of murder had been proved. On the issue of malice aforethought the prosecution submitted that it can be deducted directly or indirectly depending on the peculiarity of the facts. They relied on the case of **Republic vs Tubere S/O Ochen 1945 12 EACA 63** that sought inference of malice aforethought from the weapon used and the part of the body targeted and the conduct of the accused before, during and after the attack.

ANALYSIS AND FINDINGS

8. Prima Facie case is defined in Blacks Law Dictionary 9th Edition in Page 1310 as *the establishment of a legally required rebuttable presumption. A party's production of enough evidence to allow the fact trier to infer the fact at issue and rule in the party's favour.*
9. In this case the facts at issue involve the elements of the offence of murder. A prima facie case to the charge of murder is thus proved by the inference of the three elements of the offence as set out in Section 203 of the Penal Code, that there was an unlawful death, that the accused person caused the unlawful death of the deceased by an act or omission and that they had malice aforethought **NZUKI VS REPUBLIC [1993] KLR 171.**
10. I have considered all the evidence which was tendered by the prosecution at the trial. At this juncture, the court is not obligated to give reasons for its decision especially where it finds that there is a prima facie case. This is to avoid prejudice to the accused person who at this stage has not given his defence and has therefore not had an opportunity to be heard. The court should not be seen to be arriving at conclusion based on the evidence on one side without giving the other side an opportunity to present their case. All I can say in this case is that upon considering all the evidence tendered by the ten witnesses, I find that a prima facie case has been established and is sufficient to warrant the accused person to be called upon to give his defence as provided under **Section 306(2) of the Criminal Procedure Code**. The accused will have a right to address the court in a sworn or unsworn statement and call witnesses.

Dated at Kerugoya this 13th day of August 2020.

L. W. GITARI

JUDGE