



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NANYUKI**  
**CRIMINAL CASE NO. 19 OF 2016**

REPUBLIC.....PROSECUTOR

*Versus*

NEWTON MUCHEMI WAMBUI.....ACCUSED

**RULING**

1. **NEWTON MUCHEMI WAMBUI** was charged with the offence of murder. The prosecution called a total of 6 witnesses before closing its case: Justice John M. Mativo in the case **REPUBLIC V GEOFFREY MAINA MUMBI & ANOTHER [2016] eKLR** considered the duty of the trial court at the close of prosecution's case viz:

*“The High Court of Malaysia enumerated the following steps that should be followed by a trial court at the close of the prosecution's case, (Phiri Maileisvs Public Prosecutor, court of Appeal of Malaysia, Criminal Appeal No: p -05-311-11/2011)*

*a. at the close of the prosecution's case, the court should subject the evidence led by the prosecution in its totality to a maximum evaluation. Carefully scrutinize the credibility of each of the prosecution's witnesses. Take into account all reasonable inferences that may be drawn from that evidence, then draw the inference that is most favourable to the accused;*

*b. The presiding Judge or Magistrate should ask himself/herself the question “if I now call upon the accused to make his defense and he elects to remain silent, am I prepared to convict him on the evidence now before me? If the answer to that question is ‘yes’ then a prima facie case has been made out and the defence should be called. If the answer is ‘no’ then, a prima facie case has not been made out and the accused should be acquitted.”*

2. Of all the 6 prosecution's witness none in any way implicated the accused as being involved in the murder he now faces.

3. **P W 1 LYDIAH WANJA MUHITA** testified how on the night of 28<sup>th</sup> January, 2013 her 19 sheep were stolen and despite getting help of her neighbours to trace them on that night she was unable.

4. She on subsequent dates went around in search of those sheep. In her search she was informed by police on patrol that there were some sheep at Nanyuki police station whose owner was unknown.

P W 1 went to Nanyuki police station and found 7 of her 19 sheep that were stolen.

5. P W 1 on being cross examined stated that she first saw the accused at Nyeri High Court when she went to testify on the loss of her sheep.

6. P W 2 was **PETER WACHIRAMURIUKI**. He testified that on 29<sup>th</sup> January, 2012 he was telephoned by his cousin called Joseph Waigeri. Waigeri request him go and direct a driver of a Nissan vehicle to Waigeri's home at Munyu area.

7. P W 2 met with a man called John at Nanyuki town. John was a driver of the Nissan vehicle. As they travelled the driver stopped at Ichuga area and people boarded and sheep were also loaded.

8. P W 2 directed the driver to Waigeri home where they left the sheep.

9. The following day P W 2 was telephoned by John the driver who requested that they meet. When P W 2 went at the place agreed he found John in the company of two other persons.

10. John and P W 2 were asked to pay for the sheep. When they said they were unaware about the payment they were led to a deserted bushy area. John the driver was allowed to go and get the people who were to make payment but P W 2 was left in the company of the two people who were joined by the accused. The three people assaulted P W 2 who was eventually rescued by police who were alerted by John the driver.

11. The accused was not arrested at that scene.

12. P W 4 Shadrack Ywan was a retired superintendent of police. His evidence was most confused. He could not recall the name of the accused even though he investigated this case.

13. He stated that during his investigation of the murder the accused was arrested and in his view the evidence gathered did not directly implicate the accused.

14. On being cross examined this retired police officer said

***“Yes it was never established who committed [the] offence... There was nothing connecting accused to the offence”.***

15. P W 5 Corporal Oshward Gitonga stated that his involvement in this case was his arrest of the accused.

16. P W 3 was the wife of deceased and she stated in evidence that she did not know the accused.

17. P W 6 was the doctor who performed the postmortem over deceased's body

18. Having carefully scrutinized the very shallow evidence of the prosecution I find that the prosecution has not proved a case beyond reasonable doubt. A prima facie case is not made out.

A case in point is: **RAMANLALTRAMBAKLAL BHATT –Vs- REPUBLIC (1957) E.A. 332** as follows:

***“(1) the onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie 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.***

***(ii) The question whether there is case to answer cannot depend 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”.***

19. I find that no evidence of material ingredient of the offence of murder has been proved by the prosecution. I repeat, there is no evidence linking the accused to the murder, at all. There is therefore at the close of the prosecution's case no case made out against the accused which would justify this court

requiring the accused to be put to his defence.

20. It is therefore my finding that the accused has no case to answer. There is no prima facie case established by the prosecution.

21. I therefore hereby make a finding of not guilty against the accused Newton Muchemi Wambui under **Section 306 (1)** of the Criminal Procedure Code. **I order the accused to be released from custody unless he is otherwise lawfully held.**

**Dated and Delivered at Nanyuki this 20<sup>th</sup> day of December, 2017**

**MARY KASANGO**

**JUDGE**

**Coram**

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Accused: Newton Muchemi Wambui .....

For Accused: .....

For State .....

Language .....

**COURT**

Ruling delivered in open court

**MARY KASANGO**

**JUDGE**