



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Muchene (Criminal Case 001 of 2022)
[2025] KEHC 3152 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3152 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL CASE 001 OF 2022
AK NDUNG’U, J
FEBRUARY 20, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

NANCY WAMBUI MUCHENE ACCUSED

RULING

1. The Accused, Nancy Wambui Muchene is charged with Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars were that on the 2nd day of January, 2022 at Gatei area Sub-Location, Kieni East Sub-county within Nyeri County, murdered Esther Nyaguthii Kago.
2. In the quest to discharge the burden of prove placed on its shoulders by the law, the prosecution called a total of 10 witnesses and produced 7 exhibits.
3. I have carefully considered the evidence tendered. Am alive to the fact that at this stage, the court’s duty is limited to making a finding whether the prosecution has established a prima facie case to warrant the accused being placed on her defence.
4. The term Prima facie is not defined under Section 306 of the *Criminal Procedure Code*.
5. In Republic v Abdi Ibrahim [2013] ECLR, a prima facie case was defined as follows:

“Prima facie” is a Latin word defined by Black’s Law Dictionary, 8th Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “Prima facie case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”.



6. In Ramanlal Trambaklal Bhatt v R [1957] E.A 332 at 334 and 335, the court stated 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, the 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 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 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 is 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 tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”

7. Similarly, in Ronald Nyaga Kiura v Republic [2018] eKLR the court 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 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 v 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.”

8. For the establishment of a prima facie case in a murder trial, the court must be alive to the ingredients of the offence and weigh the evidence in relation to the same. The ingredients were well set out in the case of Anthony Ndegwa Ngari v Republic [2014] eKLR as follows;

- i.The fact of death.
- ii.The fact that the deceased’s death was caused by an unlawful act or omission.
- iii.That the accused committed the unlawful act which caused the death of the deceased; and
- iv.That the accused had malice aforethought.

9. Flowing from the above and on the strength of the evidence adduced by the prosecution, am satisfied that a prima facie case has been established to warrant the accused herein being placed on her defence. She is so placed.

DATED SIGNED AND DELIVERED THIS 20TH DAY OF FEBRUARY 2025.

A.K. NDUNG’U

JUDGE

