



REPUBLIC OF KENYA



**Republic v Kimwetich (Criminal Case E020 of 2023)
[2025] KEHC 2147 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2147 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E020 OF 2023
RN NYAKUNDI, J
FEBRUARY 14, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

COSMAS KIMWETICH 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 offence were that on the 1st day of August, 2023 at Kabatu area, in Moiben Sub-County within Uasin Gishu he murdered one Ruth Mutai. The accused was presented before this court and a plea of not guilty was entered.
2. The prosecution called a total of 8 witnesses to discharge its burden of proof whose evidence is summarized as hereunder:
3. PW1 was Hillary Kiplagat Keino who testified that on the morning of 1st August 2023, he heard screams from his neighbor, Eliud Sigilai and upon inquiring found that Eliud's elderly mother (the Deceased) was missing from the house. Together with another herdsman – Koech, they went to the Deceased's house and found that the clothes the deceased was wearing on the previous day being a skirt, petticoat and a cap were at the door entrance. The Deceased was not in the bedroom and her bedding was filled with mud. PW1 observed a masai ring in the kitchen of the Deceased. The duo also observed blood marks on the wall of the main house and on looking further found the body of the Deceased at least 10 meters away. PW 1 notified the Chief at this point.
4. Next was Peter Kipchumba Nambale who testified as PW2 stating that upon getting information that the Deceased who he referred to as Gogo had been killed, teamed up with the village elders in doing their own independent investigations. He noticed that one of the Herdsmen in the compound, being the Accused, who was known to wear maasai jewelry was missing from the Compound and yet there



was already a crowd at the home that was eager to find out what had transpired. Efforts were made to look for the Accused and he was found and interrogated in the presence of PW2. When asked if the masai ring belonged to him, he agreed.

5. Philemon Kitur took the stand as PW3, and the Accused's employer since 2020. He confirmed that he had heard rumors of the Accused's behavior of trespassing into people's houses in the dead of the night. Although he had not taken any action at the time, he was planning to let the Accused go.
6. PW4 – Viola Chemeli who is the Deceased's daughter in law is among the first people to have noticed that the Deceased was not in her home and that her windows were open which was unusual and therefore raised the alarm.
7. PW5 was Thomas Kimeli Koech who testified thereafter confirming PW4's testimony. He too worked as a herdsman in the compound and was used to finding the Deceased's milking can outside every morning for him to fill it, however on the morning of 1st August 2023, this was not the case. He tried calling out the Deceased but she did not respond. He checked inside the house and found the clothes she was putting on the previous night by the door. He tried looking for her inside the house but did not find her. It was then that he notified PW4.
8. Hezekiah Ruto who is the Assistant Chief of the area testified as PW6 stating that when he was notified about the incident, he immediately made his way to the scene while also notifying the officers at Moiben Police Station. He confirmed that the Deceased was indeed and dead and ensured to secure the scene. He convened a meeting with the members of the public with a mission to uncover who the owner of the masai ring. In his independent investigation it was established that the Accused had been spotted on several occasions wearing that same ring. The Accused himself was not present at the scene and therefore efforts were made to try and look for him. PW6 confirmed that the Accused was found at the dairy bay sleeping with a blood stained trouser and which had a lot of mud. He also did not have his ring but when asked where it was claimed to have lost it the previous evening while attending to cattle. Further that the jacket that the Accused was wearing on the previous day was found in a plantation next to PW3's home with blood stains and mud. He yielded the Accused together with his close friend – Hillary Kipsang, who had similarly been apprehended, to the police for further questioning.
9. The Government Pathologist testified as PW7 and produced the Post Mortem as exhibit 3. The Deceased was noted to have a number of external injuries such as multiple bruises on her whole face, her upper limbs, her left gluteal and right filial bone as well as a number of lacerations on her upper lip and arms. She had similarly fractured her 3rd to 9th left ribs and there were signs of internal head bleeding indicative of a lot of suffering prior to her death. The expert opinion of PW7 was that the cause of death was suffocation with chest injury.
10. Finally, the IO testified as PW 8. He confirmed having visited the scene upon being informed of the incident. He further confirmed having received the Accused's jacket and blood- stained vest and a masai ring and bangle that was retrieved at the scene. Another individual known as Hillary Kipsang had equally been arrested and while at the scene, he got a white soil stained trouser and a grey stained jumper. In his investigations, he established that the Accused and some of his friends were drinking the previous evening where the other 2 – Josephat and Hillary started fighting where the Accused was inciting them. The fight was broken off and Josphat and Hillary went to sleep. It is not known where the Accused went to because he was not seen in his house afterwards. The IO furnished the masai ring and bangle and the photos taken at the crime scene as exhibits 1, 2 and 4 respectively.
11. At the time of writing this decision, the defense counsel Mr. Tarigo had not filed his submissions. I only have on record the prosecution's submissions which are highlighted as follows:



12. The prosecution under the leadership of Ms. Kirenge filed written submissions addressing the element of a prima facie case. It is submitted for the prosecution that A prima facie case is established where the evidence tendered by the Prosecution is sufficient on its own for a Court of Law to return a guilty verdict even if the accused opts to remain silent.
13. Learned Counsel submitted that the prosecution is mandated by law to prove the flowing elements of the offence of murder beyond reasonable doubt - that the deceased is dead, that the death was caused unlawfully, that there was malice aforethought and that the Accused person directly or indirectly participated in the commission of the alleged offence.
14. She maintained that the evidence herein indeed confirmed that the Deceased died. Further the evidence of the Pathologist is that the same was a result of suffocation. The Deceased similarly had so many unexplainable injuries on her body and for a person her age (88 years) indicative of the fact that someone purposely inflicted these injuries on her.
15. That the actions of the Accused prior and after the death also add to the circumstantial evidence pointing a finger to the fact that he had a hand in the commission of the offence: His clothes were found to have a lot of blood and yet he was not in the fight with his 2 friends that took place the previous night; His masai ring was found in the house of the Deceased and it had no business being there; and His absence from the crime scene on the morning was glaringly visible knowing well how such an incident would cause intrigue to members of the public in a bid to find out what was going on.
16. Counsel submitted that sufficient and consistent evidence has been tendered and a prima facie case against the Accused has been well established. She urged this Honorable Court to enter a finding in the State's favor and place the accused on his Defence at the earliest possible date.

Analysis and determination

17. Based on the evidence presented by the eight prosecution witnesses, this court must now determine whether the prosecution has established a prima facie case that warrants requiring the accused to present a defense against the murder charge.
18. The prosecution bears the burden of proof throughout the trial proceedings against the accused, a fundamental principle that remains constant and does not shift at any stage. This foundational concept is anchored in the accused's constitutionally guaranteed protections, which encompass the right to remain silent, the right to both present and challenge evidence, and the protection against self-incrimination. These constitutional safeguards form the bedrock of the accused's legal position throughout the proceedings.
19. At this preliminary stage of the trial, however, the prosecution faces a distinct evidentiary threshold. While the ultimate burden requires proof beyond reasonable doubt, the current proceedings demand only the establishment of a prima facie case. This lower standard aligns with the preliminary nature of this phase, recognizing that the full weight of evidence need not be demonstrated at this juncture.
20. A prima facie case is established where the evidence tendered by the Prosecution is sufficient on its own for a court of law to return a guilty verdict even if the accused opts to remain silent.
21. Under Section 306 (1) of the *Criminal Procedure Code*:

“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 the several or any one of the 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, record a finding of not guilty.”

22. Having considered the testimonies of the eight (8) prosecution witnesses, the question is whether the evidence tendered establishes a prima facie case against the accused, or whether the accused has a case to answer.

23. In Republic v Abdi Ibrahim Owi [2013] eKLR, the court defined a prima facie case as follows:

“‘prima facie’ is a latin word defined by Black’s Law Dictionary 8th Edition as, “sufficient to establish a fact or raise presumption unless disapproved or rebutted”. ‘prima facie’ is defined by the same dictionary as “the establishment of a legally required rebuttable presumption.”

24. The concept of prima facie entails establishing a rebuttable presumption of guilt against an accused person for the charged offense. The court in Ramanlal Trambaklal Bhatt v R [1957] E.A 332 provided authoritative guidance on this principle at page 335, stating 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 question ...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 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.”

25. Based on the Ramanlal Trambaklal Bhatt v R case, this court is tasked with a meticulous evaluation of whether the prosecution's evidence in its current form would sufficiently sustain a conviction if the accused exercises their constitutional right to silence. The fundamental consideration centers on whether the presented evidence, examined independently and under rigorous legal scrutiny, meets the requisite threshold for a criminal conviction.

26. This analysis necessitates a dual assessment. Initially, the court must determine if the prosecution's evidence, presuming its credibility and reliability, establishes each essential element of the murder charge. Subsequently, the court must evaluate whether this evidence, standing independently without defense rebuttal, satisfies the exacting standard of proof beyond reasonable doubt necessary for conviction.

27. In Ronald Nyaga Kiura Vs Republic, the court held:

“It is important to note that at the close of the Prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie case 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...](#)”



28. When concluding that an accused has a case to answer, the trial court must exercise particular restraint in its findings at this preliminary stage. The court should avoid making definitive determinations about the evidence or drawing conclusive inferences about guilt. Instead, my role is to assess whether the prosecution has presented sufficient credible evidence that could, if unrebutted, sustain a conviction.
29. In *Festo Wandera Mukando Vs Republic* [1980] KLR 103, the court held:

“...we 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 judgment. Where a submission of “no case” to answer 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 court or courts concerned.”
30. The reason why commenting on the evidence is restricted at this stage of the proceedings is mainly because only one side has made attempts to present evidence in support of their position. It would be more prejudicial if the court was to import language to the decision which is likely to be prejudicial to the defence case in the final analysis.
31. Having considered the material placed before me, I am mindful of the guidance in *Festo Wandera Mukando vs. Republic* regarding the necessity for judicial restraint at this preliminary stage. The prosecution’s evidence, through eight witnesses, has presented testimony regarding the death of Ruth Mutai, the circumstances surrounding her demise, and certain physical evidence recovered from the scene and in connection with the accused.
32. The prosecution has presented evidence through multiple witnesses regarding the discovery of physical items connected to the accused at the scene, testimony about the accused's movements and conduct around the time of the incident, and medical evidence concerning the cause and circumstances of death. While there may be matters that require further examination and explanation, those are properly matters for the defence stage of these proceedings.
33. Accordingly, I find that the prosecution has established a prima facie case for the purposes of Section 306(2) of the *Criminal Procedure Code*. The accused is hereby placed on his defence.
34. The defence hearing shall commence on 1st March 2025.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 14TH DAY OF FEBRUARY 2025.

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R. NYAKUNDI

JUDGE

