



**Republic v Gichuru (Criminal Case 2 of 2019)
[2025] KEHC 717 (KLR) (3 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 717 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 2 OF 2019
SM MOHOCHI, J
FEBRUARY 3, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JAMES GICHURU ACCUSED

RULING

1. The accused James Gichuru was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars are that on the 5th day of January, 2019 at Mwariki Parkview in Nakuru within Nakuru County, murdered Arnold Kibet.
2. The accused person pleaded not guilty to the offence preferred against him. The prosecution presented three (3) Witnesses in support of its case.
3. In this case last witness testified on 20th July, 2021 and for three years the prosecution has not been able to avail other witnesses. There have been adjournments from either side. The Accused person has however been attending Court as he is out on bail.
4. When a Court with regard to the material placed before it finds that the accused person should be put on their defence the Court ideally would not give a detailed ruling as the same can be addressed in the final decision. On the other hand, if the Court was of the considered view that an accused person has no case to answer, it would be imperative to give detailed reasons.
5. Section 306 of the *Criminal Procedure Code* calls upon this Court to make a Ruling on whether the prosecution had established a prima facie on case to answer warranting the accused person to be put on his defence or otherwise.



6. At this stage of the proceedings what the Court is required to do is to establish whether a *prima facie* case has been established and not proof beyond reasonable doubt. A *prima facie* case was defined in *Republic v Abdi Ibrahim Owl* [2013] KEHC 2122 (KLR) 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”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with. 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. A *prima facie* case therefore is essentially not made out of proof beyond reasonable doubt but on rebuttable presumption that the accused person is guilty of the offence he is being accused of.
8. I have considered the evidence adduced by the prosecution which emanates from PW1 Chepkoech Mercy Langat the mother of the deceased who testified that she left the deceased with neighbour and later after returning, some children came at around 5pm and told her that the deceased was sleeping. She was taken to the place he was sleeping, a house under construction in the next plot. Since the gate was locked and fenced with a brick wall, she had to climb up the wall. She went to the house under construction found the deceased sleeping and unconscious in the 3rd room.
9. That the deceased had a deep cut on the right chin and throat. He called him he did not respond nor breath. Where he lay there was no blood. She took the deceased saw the accused standing at his door as she was leaving with the deceased. He never spoke to her only stared at her. Another neighbour helped her hold the deceased as she climbed the wall and went to take him to hospital where he was pronounced dead.
10. She admitted in cross examination that she never referred to the accused in her statement and that she was never told that the accused inflicted the injuries on the deceased. She never spoke to the accused person. She suspected the accused person since he started at her without talking to her yet he saw she was in distress.
11. PW2 No. 105489 PC Immaculate Ochingonge only witnessed the post mortem of the deceased in the presence of the deceased’s parents.



12. PW3 No. 483 46 CPL Micheal Abuto the Investigating Officer stated that he visited the scene and the house under construction was not in the same compound as that of the accused. The property under construction had its own gate and with a chain link going through the compound of the accused person. They passed over the perimeter wall aided by the building materials.
13. He never took the photographs of the scene and was also not aware whether the photographs were taken. He also never collected anything from the scene or went back to the scene. He never questioned the accused who was standing at his doorstep or entered his home. There was no entry to the home except through a gate.
14. He admitted that they did not have anything in particular connecting the accused to the offence. There was no way a child would have gone through the perimeter wall. The chain link linked the house of the accused to the one under construction.
15. I note that the prosecution was not able to adduce evidence on the fact of death. The cause of death was also not established since there was no post mortem report produced or a pathologist called to ascertain the fact or cause of death. Secondly the prosecution did not adduce evidence of an unlawful act or omission remotely linked to the accused resulting in the death of the deceased. Further the Investigating Officer admitted to there being nothing linking the accused to the crime.
16. In order for the accused to be put on his defence, there should be prima facie case established by the Prosecution. None of the witnesses called could place the accused at the scene save that his compound was next to the compound of the crime scene. There are gaps as to; were there construction workers on site, was the owner of the house under construction questioned, what did the children say about how the deceased ended up sleeping at the scene. The crime scene was also not combed for evidence. The identity of the perpetrator is also in question.
17. Under Article 50 (2) (a) of the *Constitution*, the accused is presumed innocent until proven otherwise. This case is however marred with gaps and the same can only be interpreted to the benefit of the accused person. See *Republic vs Martin Thinguku* [2021] KEHC 955 (KLR).
18. In *Republic v Patrick Mutisya Mutinda* [2022] KEHC 1622 (KLR):

“In my view, where clearly the prosecution’s case as presented even if it were to be taken to be true would still not lead to a conviction such as where for example an accused has not been identified or recognized and there is absolutely no evidence whether direct or circumstantial linking him to the offence it would be foolhardy to put him on his defence. There is no magic in finding that there is a case to answer and a case to answer ought only to be found where the prosecution’s case, on its own, may possibly, though not necessarily, succeed. An accused person should not be put on his defence in the hope that he may prop up or give life to an otherwise hopeless case or a case that is dead on arrival. Defence case is not meant to fill in the gaping gaps in the prosecution case.”
19. By the material placed before me I am not convinced that the evidence before Court by the prosecution would be sufficient to sustain a conviction even if the accused person remained silent. It is an unfortunate incident and a great injustice to the deceased person streaming from the laxity of the investigators and the prosecution.
20. The upshot of the foregoing is that the prosecution has met the test of a prima facie case to warrant the accused person to be called upon to answer. The accused is hereby acquitted of the offence of murder under Section 306(1) of the *Criminal Procedure Code*.



It is so ordered.

DATED SIGNED AND DELIVERED ON THIS 3RD DAY OF FEBRUARY 2025

.....

MOHOCHI S.M

JUDGE

