**Njiru v Republic (Criminal Appeal E016 of 2024)**
**[2025] KEHC 3146 (KLR) (Crim) (19 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3146 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NYANDARUA**

**CRIMINAL**

**CRIMINAL APPEAL E016 OF 2024**

**KW KIARIE, J**

**MARCH 19, 2025**

**BETWEEN**

**JOSEPH WAWERU NJIRU ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

***(Being an appeal from the ruling in Nyahururu Senior Principal Magistrate's Criminal Case No. E446 of 2024 by Hon. Judicaster Nthuku – Principal Magistrate)***

## JUDGMENT

1. On the 3rd of July 2024, Hon. Judicaster Nthuku delivered a ruling and placed the appellant on his defence under section 211 of the *Criminal Procedure Code*. 2. The ruling aggrieved the appellant, who subsequently filed this appeal through the firm of advocates Kipkorir & Wanyama LLP. He raised the following grounds of appeal:

    a. The learned magistrate erred in fact and law in finding that the appellant has a case to answer despite the underwhelming evidence from the prosecution;

    b. That the learned magistrate erred fundamentally in law in failing to find that the evidence on record, its probity, consistency and weight thereof, did not support the charge.

    c. The learned magistrate misdirected herself as to the nature of the charge of stealing by servant under section 281 of the *Penal Code* and in interpreting the ingredients thereof;

    d. The learned magistrate erred in law and consequently misdirected herself on what constitutes a prima facie case.

e. The learned magistrate erred in law and fact in placing the appellant on his defence on the charge of stealing by servant despite the persecution witnesses testifying that the accused was not an employee of Total Energies Limited.

f. That learned charge erred in law and fact in putting the appellant on his defence to clear doubts and fill gaps in the prosecution case.

g. The learned magistrate failed to consider that once the prosecution tendered evidence, it was her duty to impartially interrogate the same and use it to arrive at a just decision.

h. The learned magistrate erred in law and fact in finding that the appellant had a case to answer.

The prosecution failed to provide proof of ownership of the alleged stolen items;

i. The prosecution failing to provide proof of ownership of the alleged stolen items;

ii. The prosecution failing to produce evidence of any probative value and weighty;

iii. The prosecution failing to provide an expert report to wit audited accounts, primary source documents thereof and bank statements;

iv. The fact that no witnesses saw the accused steal from the complainant.

v. That none of the alleged stolen items were recovered from the accused;

vi. The prosecution calling an incompetent expert witness,

i. The learned magistrate erred in law and fact by failing to consider the appellant's submission.

2. The respondent failed to file grounds of opposition or any submissions.

3. When is the prosecution said to have established a prima facie case? In the Black's Law Dictionary, 10th Edition, prima facie case is defined as follows:

> Prima facie case. (1805) I. The establishment of a legally required rebuttable presumption. 2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.

4. The Court of Appeal in the case of Ramanlal Trambaklal Bhatt vs R [1957] E.A 332 at 334 and 335 defined prima facie case as follows:

> 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 tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.

5. An appeal from an interlocutory decision must fall within the exceptions prescribed by the Supreme Court in Waswa *v Republic (Petition 23 of 2019*) [2020] KESC 23 (KLR) stated as follows:

> The right of appeal against interlocutory decisions was available to a party in a criminal trial but should be deferred, and await the final determination by the trial court. A person seeking to appeal against an interlocutory decision had to file the intended notice of appeal within 14 days of the trial court's judgment. However, exceptional circumstances could exist where an appeal on an interlocutory decision could be sparingly allowed; these include:
>
> a. where the decision concerned the admissibility of evidence, which, if ruled inadmissible, would eliminate or substantially weaken the prosecution case;

b. when the decision was of sufficient importance to the trial to justify it being determined on an interlocutory appeal; and

c. where the decision entailed the recusal of the trial court to hear the cause.

6. When the trial court places an accused person on defence, the ruling does not infringe upon the rights of the accused to a fair trial as envisaged under Article 50 of *the Constitution* of Kenya, particularly in Article 50 (2) (i), which provides:

(2) Every accused person has the right to a fair trial, which includes the right—

(i) to remain silent, and not to testify during the proceedings;

7. Though it was contended that the appeal is premised on clause (b) above, I find it overstretching the argument. The test of a prima facie case is determined by whether sufficient evidence supports the charge. In R. v. Jagjiwan M. Patel and Others (1) T.L.R. (R) 85, the court stated that:

> ...all the court has to decide at the close of the evidence in support of the charge is whether a case is made out against the accused just sufficiently to require him to make his defence. It may be a strong case, or it may be a weak case. The court is not required at this stage to apply its mind in deciding finally whether the evidence is worthy of credit or whether, if believed, it is weighty enough to prove the case conclusively, beyond reasonable doubt. A ruling that there is a case to answer would be justified, in my opinion, in a borderline case where the court, though not satisfied as to the conclusiveness of the prosecution evidence, is yet of the opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conviction.

8. I have perused the evidence on record, and in my view, the appeal against the ruling in which the appellant was placed on his defence is unmerited. The appeal is dismissed, and the case ought to proceed to its logical conclusion.

**DELIVERED AND SIGNED AT NYANDARUA THIS 19TH DAY OF MARCH 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**