



**Republic v Murage & another (Criminal Case 22 of 2019)  
[2025] KEHC 8697 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8697 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE 22 OF 2019  
EM MURIITHI, J  
JUNE 19, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MICHAEL NJERU MURAGE ..... 1<sup>ST</sup> ACCUSED**

**SIMON MUCHOIKI MURAGE ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The accused persons are charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The accused persons pleaded not guilty to the charge and the matter proceeded to trial, and the prosecution called 5 witnesses to prove the charge.
2. Section 306 of the Criminal Procedure Code provides as follows:  
 “306. Close of case for prosecution

- (1) 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 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.
- (2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it



is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.

- (3) If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon him to enter upon his defence. [[Act No. 33 of 1963](#), First Sch., [Act No. 20 of 1965](#), s. 33, [Act No. 5 of 2003](#), s. 86.]”

3. As required under section 306 of the [Criminal Procedure Code](#), the Court has considered whether there is the evidence that the accused persons committed the offence. At this stage, the Court is required to consider whether the prosecution has adduced evidence to establish whether a prima facie case exists. A prima facie case within the meaning of *Ramanlal T. Bhatt v. R* (1957) EA 332, 335, that is “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.”
4. Before the Court is the evidence of the five (5) prosecution witnesses in this case - the Deceased’s nephew PW1, brother PW2, Baricho watchman PW3, the Investigating Officer PW4 and the Post-mortem examination doctor PW5 - together with the submissions filed by Counsel for the DPP and for the Accused respectively dated 24<sup>th</sup> March 2025 and 30<sup>th</sup> April 2025, and the persuasive case-law authorities and materials cited therein.
5. Without discussing the detailed merit of the case, this Court finds in terms of section 306 (2) of the [Criminal Procedure Code](#) and having regard to the elements of the offence of murder as set out in *R. Nyambura* (2002) eKLR that there is evidence that there is evidence that “the accused person or any one or more of several accused persons committed the offence” subject of the charge herein. In accordance with the Court of Appeal decision in *Antony Njue Njeru v R* (2006) eKLR the Court does not give detailed reasoning at this stage.

### Orders

6. Consequently, the accused persons shall be put on their defence in accordance with section 306 (2) and section 307 of the [Criminal Procedure Code](#), and their rights thereunder shall be explained.
7. Mention for Directions as to defence hearing on 24/6/2025.

Orders accordingly.

**DATED AND DELIVERED THIS 19<sup>TH</sup> DAY OF JUNE 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Mamba for the DPP

Mr. Otuke for the Accused person.

