



**Republic v Murgor (Criminal Case 14 of 2018)
[2024] KEHC 154 (KLR) (19 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 154 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 14 OF 2018
JRA WANANDA, J
JANUARY 19, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ALFRED KIPLIMO MURGOR ACCUSED

RULING

1. This is a Ruling on whether the accused person has a case to answer.
2. The accused 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 17/02/2018 at Kaptumek sub-location within Nandi County he murdered one Prudence Chepchumba. The deceased is the accused's own 3-year-old daughter. He is represented by Mr. Ondieki Advocate
3. From the record, the accused took plea on 8/03/2018 before Hon. Lady Justice Githua. He denied the charge and a plea of not guilty was entered. His Application to be released on bond was then allowed on 5/06/2018.
4. The hearing eventually commenced on 15/05/2019 before Hon. Lady Justice Sewe who took the evidence of PW1 – PW4 on the same date and the evidence of PW5 on 17/02/2020. Upon the Judge being transferred, I took over the matter and during taking of directions under Section 200(3) of the *Criminal Procedure* Act, the defence elected not to ask for recall of any witnesses and requested that the trial proceeds from where it stopped. I then took the evidence of PW6 after which the prosecution closed its case.
5. I am now to rule on whether the accused has a “case to answer”. In respect thereto, the prosecution filed its Submissions on 13/06/2023. I have not come across any Submissions from the Defence.



6. Regarding the evidence presented, PW1, Jackline Jepyego is the estranged wife of the accused and as aforesaid, the deceased was one of their children. PW1 testified that on 17/02/2018 at around 5.00 pm, she was at home with her mother and her 2 children when the accused arrived armed with a piece of wood and demanded that the children be handed over to him, PW1's mother told the accused that the children would return to the accused on the next day, that when his demands were not immediately met, he grabbed PW1 by the hand and upon which PW1's mother intervened. According to PW1, the accused then turned on the mother and hit her on the head, he also hit the deceased. PW1 ran away screaming, one of her brothers together with neighbours responded by rushing to the scene, PW1 returned with them only to find her mother and her daughter (deceased) lying down unconscious with injuries. The two were rushed to hospital where the deceased was pronounced dead
7. PW2, Naomi Maiyo, testified that on the said date she was within the said home when at around 5.00 pm the accused arrived and demanded to be given his children, that the accused was holding slippers, PW1's mother intervened and stated that the children would return to the accused on the next day, an altercation then ensued upon which PW1 ran away, PW2 too ran away. She stated that she did not see the accused attack anyone.
8. PW3, Hellen Jeptabui, the mother to PW1 and grandmother to the deceased basically echoed the testimony of PW1. She stated that when she restrained the accused and told him to come for the children on the next day, the accused started hitting her with a stick on the head until she lost consciousness. She stated that she only woke up in hospital, that the accused picked the stick from within the compound and that she did not witness the accused hitting the deceased since she (PW3) was already unconscious.
9. PW4, Philip Kipchumba Maiyo, a brother to PW1 and therefore uncle to the deceased, testified that on the said date, he was at his home which is about 200 metres from his parents' home, at around 5 00 pm, he heard noises from her parents' home. He stated that on his way rushing there, he met his said sister screaming that "he has killed my daughter and mother", PW4 not understanding the meaning of such words rushed to his parents' home where he found his mother and the deceased lying down injured, he rushed the two to hospital but the deceased died on the way. He stated that PW1 told him that it is the accused who had assaulted them. He stated further that the marriage between the accused and PW1 had not been a peaceful one and that PW1 had on many occasions returned home after disagreeing with the accused. He stated further that he never witnessed the incident, he never saw the accused at the scene by the time that he arrived there and that the accused's home is about 1 ½ kilometres away.
10. PW5, Corporal Lilian Ochieng, the Investigating Officer stated that she is based at Kabujoi Police Station, Nandi County, that on 17/02/2028 she was in her office when at around 11.00 pm PW1, PW4 and another person arrived and reported the incident, that PW1 recounted to her what had transpired as above and stated that the accused had intended to hit PW1 with a stick but missed and instead hit the child (deceased) whom PW1 was carrying, the next morning the Officer Commanding the Station (OCS) informed her that the accused had been arrested. She stated further that she visited the scene and recorded statements from witnesses, at the scene she noted evidence of heavy bleeding, she did not recover the murder weapon and was told that the accused had run away with it.
11. PW6, Dr Evans Kibiwott produced the post-mortem report prepared by his colleague, Dr. Otieno Hayanga, who was said to be away on study leave. He stated that the body had two open and depressed wounds on the forehead with evidence of dried blood from the nostrils and auditory canals, severe cracking on the skull bone, massive haematoma on the scalp, more than 10 fractures on the skull and oozing out of brain tissues, among others. An opinion was formed that the cause of death was severe



- head injury due to multiple impact by a blunt object from a height higher than the deceased's standing height.
12. At this stage, the Court is only considering whether the accused has "a case to answer" and which was described by G. Dulu J in the case of *Republic vs Joseph Sbitandi & Another (2014)* eKLR as follows:

"A case to answer is a case where if the accused keeps quiet, the evidence of the prosecution should be such that a conviction will result."
 13. The procedure in determining whether an accused has a case to answer was discussed in the case of *Republic vs Samuel Karanja Kiria (2009)* eKLR where J.B Ojwang J (as he then was) stated the following:

"The question at this stage is not whether or not the accused is guilty as charged but whether there is cogent evidence of his connection with the circumstances in which killing of deceased occurred. That the concept of prima facie case dictates as a matter of law that an opportunity created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled ... The Court of Appeal in Criminal Appeal No. 77/2006 expressed that too detailed analysis of evidence stage at no case to answer stage is undesirable in the court is going to put accused on his defence as too much details in the trial court's ruling could then compromise the evidentiary quality of the defence to be mounted."
 14. The trial Court is cautioned that at this stage, it should not make definitive findings should it conclude that the accused has a case to answer. In this regard, in *Festo Wandera Mukando vs Republic [1980] KLR 103*, E. Trevelyan J stated as follows:

"...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 count or counts concerned."
 15. I have considered the evidence on record, the testimonies of the witnesses as set out above and, also the respective Submissions filed by the Prosecution and the defence. Without delving into the merits thereof, I only state my finding to be that the prosecution has established a prima facie case. Accordingly, I find that the accused person has a case to answer.
 16. Pursuant to my finding above, the accused person is now informed of his rights under Article 50(2) (i) and (k) of *the Constitution* and also under Section 306(2) as read with Section 307 of the *Criminal Procedure Code* to address the Court. Accordingly, he is informed and it is explained to him, in the presence of his Advocate, that he has a right to address the Court either personally or by his Advocate and to give evidence on his own behalf or to give unsworn statements, and to call witnesses in his defences.
 17. The accused is therefore placed on his defence.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 19TH DAY OF JANUARY 2024

WANANDA J.R. ANURO

JUDGE

