



**Republic v Nyagah & 2 others (Criminal Case E002 of 2021)  
[2024] KEHC 1459 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1459 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CRIMINAL CASE E002 OF 2021  
LW GITARI, J  
FEBRUARY 15, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOHN MBOGO NYAGAH ..... 1<sup>ST</sup> ACCUSED**

**PETER MWANGAGI ..... 2<sup>ND</sup> ACCUSED**

**ANDREW KIANIA NYAGAH ..... 3<sup>RD</sup> ACCUSED**

**RULING**

1. The three (3) accused persons herein have been charged with the offence of murder contrary to Section 203as read with Section 204 of the *Penal Code*. As per the Information dated 6<sup>th</sup> January, 2021, the particulars of the offence are that on the 17<sup>th</sup> day of December, 2020 at Muga wa Mutanka Village , Murinda sub-location, Tharaka South sub-county within Tharaka-Nithi County, the accused persons, jointly with others not before court, unlawfully murdered one Julius Majira Joseph (the “deceased”).
2. All the three (3) accused persons denied the charge facing them and the matter proceeded to trial. In support of its case, the prosecution called a total of eight (8) witnesses before closing its case on 20<sup>th</sup> September, 2023.
3. The duty of this Court at the close of the prosecution’s case is to make a ruling on whether or not the accused persons have a case to answer. This means that the question for this Court to determine at this stage is whether the prosecution has made out a prima facie case against the accused persons sufficient enough to warrant this court to put them on their defence pursuant to the provisions of Section 306(2) of the *Criminal Procedure Code*.

“(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.”

4. The leading authority on what constitutes a *prima facie* case is the case of *Ramanlal T. Bhatt -v- Republic* [1957] E.A. 332 where the court stated as follows:

“(i) The onus is on the prosecution to prove its case beyond reasonable doubt and a *prima facie* case is not 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.

(ii) The question whether there is a case to answer cannot depend 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.”

5. In summary, it was the prosecution’s case that the deceased in this case met his death in the hands of the accused persons among other persons not before court on the allegation of theft. That on the material day, the deceased met PW1 and requested him for his motor cycle to go and collect the battery of his mobile phone. PW1 gave the deceased the key to his motor cycle registration number KMEG 567B and the deceased left.

6. It was further the testimony of PW1 that he (PW1) waited for the deceased for about one (1) hour but the deceased did not come back. PW1 then decided to go home on foot expecting that the deceased would bring back the motor cycle to PW1’s home. On his way, the deceased heard screams of people saying that there was a thief of a motor cycle. PW1 decided to go to the scene where the screams were coming from and identified all the accused persons herein. According to him, the accused persons and one Gabriel Njue, who disappeared after the incident, beat up the deceased and then lynched him claiming that he had stolen the motor cycle.

7. Having considered the evidence adduced by the eight (8) witnesses in support of the prosecution’s case, I find that the all the three (3) accused persons have a case to answer. At this stage, it is not for this Court to examine minutely the said evidence and determine whether or not the accused persons are guilty. As such, I opine that based on the evidence on record, the three (3) accused persons ought to be placed on their defence. As to whether the said evidence on record meet the threshold for convicting the accused is a matter that will have to be considered at the end of the trial.

8. Section 306 of the [Criminal Procedure Code](#) provides as follows with regards to what this Court ought to do at the close of the case for the 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.”

9. The accused shall be put on their defence. They have the right to address the court in their defence either on Oath or unsworn and to call witnesses. This is in line with Article 50(2) (i) (j) (k) of the *Constitution* and Section 306(2) of the *Criminal Procedure Code*.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 15<sup>TH</sup> DAY OF FEBRUARY 2024.**

**L.W. GITARI**

**JUDGE**

