



**Republic v Njiru (Criminal Case 8 of 2020) [2024] KEHC 2517 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2517 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CRIMINAL CASE 8 OF 2020  
LM NJUGUNA, J  
MARCH 13, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**FIDELIS NJERU NJIRU ..... ACCUSED**

**RULING**

1. The accused faces the charge of murder contrary to Section 203 as read together with section 204 of the *Penal Code*. Particulars of the charge are that on April 19, 2020 at Thangariri village, Nthawa Location within Mbeere North Sub-county in Embu County, the accused murdered John Ireri.
2. The accused took a plea of not guilty and the same was duly entered. The case proceeded to trial and the prosecution called Nine (9) witnesses and then rested their case.
3. This court is tasked under section 306 of the *Criminal Procedure Code*, with making a ruling on whether or not the accused person has a case to answer and whether the prosecution has established a prima facie case. The provision states:

Section 306 (1) of the *Criminal Procedure Code*:

“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 the several or any one of the 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.”



4. The court in the case of *Republic v Abdi Ibrahim Owi* (2013) eKLR, defined a prima facie case as follows:

“Prima facie’ is a latin word defined by *Black’s Law Dictionary* 8<sup>th</sup> Edition as, “sufficient to establish a fact or raise presumption unless disapproved or rebutted”. ‘Prima facie’ is defined by the same dictionary as “the establishment of a legally required rebuttable presumption.”

5. In other words, a *prima facie* case is a rebuttable presumption that the accused person is guilty of the offence. This is the position held at Section 211 of the *Criminal Procedure Code*. Further, in the case of *Ramanlal Trambaklal Bhatt v R* (1957) E.A 332 at 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’s case, the case is merely one in which on full consideration might possible 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.....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 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”.

6. Nevertheless, where the court is not acquitting the accused person, there is no need to give a deep reasoning in a ruling for case to answer. The case would have been otherwise where there was a submission on ‘no case to answer’ as the court would be required to give its reasons for considering that the accused has no case to answer.
7. The prosecution’s evidence flows as follows: PW1, Josephina Wakeri Ireri is the widow of the deceased. She stated that on the day of the incident, she was at home when a child called Gatwiri in the company of another child went and informed her that the deceased was calling her. That the child said that the accused had obstructed the path where the deceased was passing and she accompanied the children to the scene. That before she arrived at the scene, she saw somebody running from the scene while holding a panga and Gatwiri said that the man was the one who was obstructing the deceased’s path.
8. That when they arrived at the scene, the deceased was already dead and he had been cut on the back of the head. That she started screaming and the neighbours gathered. That the deceased was taken to the hospital and he died the same day. That there was bad blood between the accused and the deceased.
9. On cross-examination, she stated that the accused is married to her daughter but the deceased did not like that relationship. That she saw somebody running from the scene, while carrying a panga but these details were not given to the police. That when she arrived at the scene, the deceased had not died and that he even spoke with his son called Philip.
10. PW2 was Caren Wawira, who stated that she was married to the accused and the deceased is her father. She stated that she had left her husband because they had been having marital problems and the accused went to see her parents 4 days before the incident. That the accused visited her parents with the intention of resolving the issues and taking her back as his wife. That her parents told the accused to go and relax and give it time since PW1 was very upset.



11. That on the day of the incident, she was in the company of the deceased and they harvested miraa then the deceased went to the market to sell it. That she was at home when her mother was called to the scene by Gatwiri. That it is PW1 who told her that the accused had cut the deceased with a panga. On cross-examination, she stated that before the incident, she had been married to the accused for 5 years and that when she left, the accused and his mother went to see her parents to resolve the issue but the deceased advised them to give it time.
12. PW3, Lucy Rwamba Githimu stated that on the day of the incident, she was around the area where the incident occurred. That she heard a scream and when she went to check, she found PW1, her sister-in-law, holding the deceased, who had been injured on the head. That the deceased was taken to the hospital. On cross-examination, she stated that when she arrived at the scene, the deceased was not talking but he was not dead. That her sister had been called at the scene by a child, whose name she could not recall.
13. PW4 was Pierra Gatwiri who stated that she had gone to the shops with her cousin Sharon Gakii and they saw an old man and a young man standing on the road and the young man seemed to be obstructing the old man from passing and they were quarrelling. That the old man told her to go and call his wife and she went. That she did not know the names of the old man or his wife. That the young man demanded that PW2 accompanies PW1 but the old man said that PW1 should go alone. That when they returned with PW1, they only found the old man alone lying down and next to him there was a small bag. That she could not identify the young man that she saw in the company of the old man. On cross-examination, she stated that it took her about 25 minutes to go and call PW1 and that she had never seen the accused before.
14. PW5 was Philip Mbogo Ileri who stated that he was heading home from Nairobi when he received a phone call informing him that his father had been attacked. That when he arrived at the scene, he found people saying “amemuuwa amemuuwa” and he saw his father who was unconscious but alive. That he took the deceased to Kings and Queens Hospital where they were referred to Embu Level 5 Hospital. That the deceased was admitted and when they went to visit him the next day, they were informed that he had died. That the accused person was arrested in connection with the death. That the deceased did not talk to him at any point between the crime scene and the hospital.
15. PW6, Millijeph Karambu stated that she received a phone call informing her that the deceased had been attacked. That when she went to the scene, she found PW1 supporting the deceased and PW1 told her that it was the accused who had attacked the deceased. That she warned the neighbors to stay indoors so that the attacker would not find them. That the deceased was bleeding from the head.
16. PW7, Dr. Mwaniki Job of Embu Level 5 Hospital stated that he conducted postmortem on the body of the deceased. He observed that there was a big cut around the left scapula region, bruising on the knee, a sutured cut on the occipital region of the scalp measuring 5cm×1cm and a sutured cut on the posterior neck measuring 14cm. He formed the opinion that the cause of death was cardiopulmonary failure secondary to subdural hematoma as a result of assault with a sharp object.
17. PW8, Dr. Andrea Mukaba did not testify because the testimony was supposed to be taken virtually but the internet connection was disrupted.
18. PW9 P.C. Jeremiah Lagat of DCI Siakago testified that he took over investigations from his colleague who was transferred to another station. He narrated the findings of the investigation as recorded by his colleague. That the deceased was walking home when he was attacked near Siakago Primary School and he was seriously injured. That PW5 reported the incident at the police station and took the deceased to hospital. That when the deceased succumbed to the injuries, PW5 also reported the death.



19. That the OCS was tipped off by members of the public that the accused was to blame for the death of the deceased and so they arrested the accused. That one of the police officers searched the house of the accused where some clothes were found and they had blood stains on them. That the clothes were sent to the government chemist for analysis but the analysis revealed that the blood was not of human origin. He produced the government chemist report as an exhibit. He also produced the mental assessment report authored by PW8, wherein the accused was found fit to stand trial. On cross-examination, he stated that the accused was arrested because some people saw the accused assaulting the deceased.
20. The standard of proof is well settled and that is beyond reasonable doubt and it is upon the prosecution to meet this standard. Such were the sentiments in the case of *Woolmington v DPP* (1935) A.C 462. At this stage in the proceedings, this court must decide whether or not a prima facie case has been established. In the case of *R. T. Bhatt v R* {1957} EA 332 the Court observed that:
- “It may not be easy to define what is meant by *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.” (See also *R v Samwel Karanja Kuria* (2009) eKLR)
21. Additionally, sections 107 and 109 of the *Evidence Act* provide as follows:
107. Burden of proof;
- (1) whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
109. Proof of particular fact
- The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
22. For the offence of murder to be proved, the prosecution is under the obligation to establish the following key ingredients:
- a. Proof of death of the deceased, and the cause,
- b. Proof of an unlawful act or omission on the part of the accused resulting in the death of the deceased,
- c. Malice aforethought on the part of the accused.
23. PW7 established the cause of death as cardiopulmonary failure secondary to subdural hematoma as a result of assault with a sharp object. The question is whether the fatal injuries were caused by the accused. PW1 stated that she was informed by Gatwiri (PW4) that it was the accused who attacked the deceased. PW2 and PW6 stated that PW1 told them that the accused is the one who attacked the deceased.
24. PW4 was the only eye witness of the incident and when asked whether she could identify the accused as the assailant, she stated that she could not identify the person who attacked the old man and that she has never seen the accused before. PW1 stated that while on the way to the crime scene in the company



of PW4, they saw a man running from the scene while holding a panga and PW4 told her that the man was the one who has attacked the deceased.

25. Proof of an unlawful act or omission by the accused is determined from evidence that places the accused at the scene of the crime. From the evidence, it is my view that the identity of the assailant is in question and none of the prosecution witnesses places the accused at the scene. In the absence of proof that the accused caused the unlawful act, it is immaterial to determine whether or not there was malice aforethought because the assailant is not properly identified.
26. It follows that gaps in the prosecution’s case raise doubts and the benefit of the doubts must be given to the accused. Article 50(2) (a) of the Constitution case provides that-

“Every accused person has the right to a fair trial which includes the right to be presumed innocent until the contrary is proved.”
27. The evidence tendered falls short of the required standard which is beyond reasonable doubt. Back to my discussion on prima facie case, I now ask myself whether the evidence tendered is capable of sustaining a conviction even if the accused person does not say anything else. My answer is in the negative. It is unfortunate that the deceased died. However, the totality of the prosecution’s evidence is not sufficient to implicate the accused as the perpetrator.
28. I find that the accused has no case to answer and he need not be put to his defense. The accused person is therefore found not guilty and is hereby acquitted of the offence of murder under section 306(1) of the Criminal Procedure Code.
29. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 13<sup>TH</sup> DAY OF MARCH, 2024.**

**L. NJUGUNA**

**JUDGE**

.....for the State

.....for the Accused Person

