



Republic v Isaac (Criminal Case 19 of 2020) [2024] KEHC 2555 (KLR) (12 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2555 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS**

CRIMINAL CASE 19 OF 2020

FR OLEL, J

MARCH 12, 2024

BETWEEN

REPUBLIC STATE

AND

KEVIN MUTUA ISAAC ACCUSED

RULING

A. Background

1. The Accused person herein Kevin Mutua Isaac was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars being that the Accused on the night of 21st into 22nd day of April 2020 at Kangundo Township in Kangundo Sub County within Machakos County murdered Grace Kilungu. The prosecution called nine (9) witnesses who testified and the prosecution closed their case.

B. Evidence

2. PW1 Dr Erick Mburu undertook the post mortem on the deceased child, who was three (3) years old. The body had multiple bruises on the chest, back interim trunk and posterior trunk, which were at different stages of healing. There was friction on the hyoid bone on the neck and after examination he did form an opinion that the child died as a result of asphyxia or lack of oxygen due to Manual strangulation. PW2 Martha Mbesa was the deceased mother. She had stayed with the accused as husband and wife for two years. On April 21, 2020, she had left her children with the accused and travelled to Nairobi for a job interview. She did not return on the said date and on the following day before being interviewed she was called from Kangundo Level 4 hospital and informed that her child had died and the accused had been arrested. She did not witness the post mortem, but was informed by one “baba Mark “that the child died as a result of being strangled and had also been hit on the head.
3. PW3 Faith Mbithe was the deceased elder sister, she testified that after they had taken supper, they went to sleep and at some point, the deceased woke up and started to vomit on the stairs. The accused



- came and did nothing, she went to sleep and left the deceased with the accused person. At some point in the night she was woken up by the accused and directed to go inform her grandmother that , the deceased was unwell, she went and stayed there for the rest of the night, she did not know if the accused took the deceased to hospital nor did she see the accused beat her up. PW4 Joseph Muli Wambua, was the deceased maternal grandfather, after the got wind of what had transpired, he went to Kangundo level 4 Hospital and confirmed that indeed his grandchild had died. She was oozing blood from the ear and had fresh wounds all over the body. He later went and recorded his statement with the police.
4. PW5 Bernadetta Mumbua Peter, testified that she was the accused grandmother and was told on April 25, 2020, that her grandchild Grace had fallen ill at night and was taken to hospital but unfortunately had died. She went to the accused house but did not find him, the relatives of PW3 had come and took her away. PW3 had also come to her house before dawn and told her that the accused had directed her to come and stay with her, but the child had not informed her that the accused was calling her.
 5. PW6 Beatrice Nyasuguta Nyazeo, testified that she was the children’s officer Kangundo sub county. On April 22, 2020, she was called by Nurse Lucy Nyambura who told her about this incident involving the deceased child. She went to hospital and saw the deceased child who had wounds all over her body. She documented the same and opened a file CCO/16/77/5/29/900 of 2020. She later wrote her statement with the DCI. Similarly, PW7 Sammy Muema Kyalo narrated what occurred at Kangundo Level 4 hospital after the accused had brought in the child for treatment, but it was discovered that the child had died before reaching the hospital.
 6. PW8 Hari Kamau testified that he was a gazetted scene of crime officer, and accompanied the OCS Kangundo police station Chief Inspector Wagane to Kangundo level 4 Hospital after receiving information about the dead child. They found the child’s body still at the casualty room, she had wounds some which were partially healed some were fresh. The wounds were all over the body especially on her back. He took the photo graphs and produced them as exhibit 2(a) to (g). First photographs had general view of the child lying on the bed with several wounds some healed others not healed. Photo 6 – 9 shows wounds all over the body. He issued a certificate of photograph which he signed on 06.05.2020 and produced as exhibit 2(h).
 7. PW9 No. 91856 CP Domitila Nyaroso currently stationed at DCI Kangundo police station testified that she was the investigating officer in the matter. On April 22, 2020, a report was made at Kangundo Police station by Samuel Muema a security officer at Kangundo level 4 Hospital. He stated that there was a child brought to the hospital known as Grace Kalondu aged 3 years. She had been brought to the hospital by the accused person. The child was lifeless. The scene was visited by the OCS, CPL Kamau and assigned her the file. She recorded the witness statement. PW2 told her that the accused was not the biological father of the deceased and PW3. He would beat them up on flimsy reasons. PW3 had told PW2, that on the material night, the accused had prepared supper and the deceased was eating slowly which irked the accused, who started to beat her up with plastic pipe and would also pinch her.
 8. The accused at some point directed PW3 to go sleep and he remained with the deceased. Later in the night, the accused woke her up and directed her to go sleep at her grandmother’s house and also tell her that the deceased was unwell, she went and slept there until morning. It was her conclusion that the accused had a hand in the death of the child given the history narrated and therefore decided to charge him with the offence before court.

C. Determination

9. I have considered the evidence so far from the prosecution’s side. The issue before me at this stage is whether the evidence so far adduced warrants calling upon the accused to defend himself. In other



words, does the accused have a case to answer? In *Republic v Abdi Ibrahim Owl* [2013] *prima facie* case was defined as follows: -

“*prima facie*” is a Latin word defined by *Black’s Law Dictionary, 8th Edition* as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “*prima facie* case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with.

10. In *Ramanlal Trambaklal Bhatt v. R* [1957] E.A 332 at 334 and 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, the case is merely one “which on full consideration might possibly 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. Nor can we agree that the question whether 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 is 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.”

11. The Court of Appeal similarly held in *Anthony Njue Njeru v Republic* [2006] eKLR that:

“Having expressed himself so conclusively we find it difficult to understand why the Learned Judge found it necessary to put the Appellant on his defence. Was there a *prima facie* Case to warrant the trial Court to call upon the Appellant to defend himself? It is a cardinal principle of law that, 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 case, the case is merely one,

‘Which on full consideration might possibly be thought sufficient to sustain a conviction’

Taking into account the evidence on record, what the Learned Judge said in his Ruling on no case to answer, the meaning of a *prima facie* Case as settled in *Bhatt’s Case*(supra), we are of the view that the Appellant should not have been called upon to defend himself as all the evidence was one record. It seems the Appellant was required to fill in the gaps in the Prosecution case.”

12. The question that this court has to deal with and answer at this stage is therefore, whether based on the evidence before this Court, the Court after properly directing its mind to the law and the evidence may, as opposed to will, convict if the accused chose to give no evidence.

13. Having considered the material placed before me I am satisfied that the prosecution has established a *prima facie* case for the purposes of a finding that the accused has a case to answer. 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.

14. I accordingly place the accused on his defence.



15. It is so ordered.

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 12TH DAY OF MARCH, 2024.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Teams this 12th day of March, 2024.

In the presence of;

Ms Otulo for ODPP

Accused present in court

Sam Court Assistant

