



**Republic v Wambugu (Criminal Case 67 of 2020)
[2024] KEHC 1985 (KLR) (1 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 1985 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 67 OF 2020
JRA WANANDA, J
MARCH 1, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JANE WAIRIMU WAMBUGU ACCUSED

RULING

1. The accused person, Jane Wairimu Wambugu, 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 27/10/2020, at Mutamaiyo area, Yamumbi with Uasin Gishu County, she murdered David Wairire Muriuki (hereinafter referred to as the deceased)
2. The accused on 18/11/2020 pleaded not guilty to the charge and the matter then proceeded to trial in which the prosecution called 8 witnesses before closing it on 7/12/2023. PW1 to PW5 testified before Ogola J. I took over the matter when Ogola J was transferred and I took the evidence of PW6 to PW8. The accused was represented by Mr. Aseo Advocate while State Counsel Ms Okok appeared for the State.
3. In this Ruling, the Court is being called upon to decide whether or not the prosecution has made out a *prima facie* case against the accused that would warrant this Court to call upon him to give his defence.
4. PW1 Dr. Kibet Keiyany, a pathologist at Moi Teaching and Referral Hospital (MTRH) Eldoret, testified that he conducted the post-mortem of the deceased on 5/11/2020 and filled the post-mortem form, that upon his examination, he noted a bluish dislocation of fingers and tongue which signified lack of oxygen, bruise on the left arm of about 2 x 1 cm, and abrasions on the right pretibial and perioral region of about 5 x 3 cm. He also noted that there were blood clots and blood from the right ear, head-right partial skull fracture which was depressed and comminuted and of about 5 x 4cm and extended to the base of the skull - right temporal, there was internal bleedings within right side of the brain,



increased intracranial pressure, and chest, abdomen, heart, liver, spinal cords were all normal. He stated that he formed the opinion that the cause of death was severe head injury due to blunt force trauma consistent with assault.

5. PW2, James Lugalo Edwin, told the Court that the deceased was his landlord and a friend, that he also knows the accused as the girlfriend of the deceased, that 23/10/2020 in the evening was the last time he spoke with the deceased, that 4 days later on 27/10/2020, he woke up at around 8:00 am and walked outside to the road when he saw the accused open the door to the house of the deceased, that she was staying with the deceased but he barely knew her, that she came to him and asked him if he had a phone number for the family of the deceased, that the accused alleged that they had been attacked the night before, she led him into the house where the deceased was lying on the floor, the deceased was lying on a mattress, he saw a lot of blood on his face and nose, the blood was dry and the eyes were open and red with blood, that at that time he was not sure whether the deceased was alive or dead, he went to seek help to take the deceased to hospital, the accused came out and informed him that she was going to drop keys to her workplace and would return, that he spotted some traffic officers metres away, he approached them and asked for help, the 2 officers agreed and went to the house, that upon examining the deceased, the officers stated that the deceased was long dead. He told the Court that he had known the deceased from his childhood and that they had lived together with the accused between 5-6 months.
6. PW3 Duncan Robo Gichui, testified that the deceased was his neighbour and later his landlord, that the deceased was his landlord for 2 months before he passed on and that he had rented a shop from the deceased. He testified that he also knows the accused as she used to be a friend to the deceased, that they lived together, he knew her after he became a tenant and it was for a short period. He testified that on 24/10/2020 at about noon, he saw the deceased and the accused leave their house, he talked to them and the deceased and the accused were fine, they were going to Kipkaren Shopping Centre, at around 8-9:00 pm, his son told him that there were guests who wanted to see PW3, the guests were the deceased and the accused, his son told him that the deceased had lost his keys so they wanted to use PW3's door to enter their house and also use his key, PW3 did not come outside the house so he did not speak to the deceased, that the next day, Sunday, he went to work and at about 8:00-9:00 am, the accused came to him and again asked to use PW3's door, he allowed her to use the door, she was fine and on that day he did not see either the accused or the deceased, he also did not see the deceased on Monday, on Tuesday - 27/10/2020 - at about 8:00 am, he found a group of people, including neighbours and traffic police officers gathered at the premises, he was informed that the deceased had died, he saw the body of the deceased lying on a mattress in the room, the eyes were open but he was not breathing, and that he did not look at the body closely so he did not see any injuries. He testified that he did not see the accused at the scene and that he never witnesses any conflict between the deceased.
7. PW4, Steve Gichuhu Robo, a son to PW3 he basically reiterated PW3's evidence. He stated that on 24/10/2020 about 9:00 pm the deceased came to their house seeking a key to enable them enter their house, that the deceased stated that they had been attacked by thieves who had taken away their key, they stated that they were injured but not so much, that there was some dirt on the clothes of the deceased but he had no visible injuries, that the accused was also fine as she had no visible injuries, that PW4 he then informed his father - PW3 - who allowed him to give them the key to the front door, which he did, that on 25/10/2020 - the following day - he saw the accused entering her house and he did not talk to her. He stated that he learnt of the death of the deceased on 27/10/2020 in the morning. He told the Court that he did not know of any conflict between the deceased and the accused. In cross-examination, he stated that the deceased told him that they had been attacked and robbed and lost their key in the process. He stated that the deceased did not look so good while the accused looked shocked but they were sober and alright. In cross-examination, he stated that he knew the accused for 2 weeks before the death of the deceased.



8. PW5, William Maina Muriuki, testified that the deceased was his step-brother, that he was present when the post-mortem was done on 5/11/2020, that he identified the body before the post-mortem was conducted, that it had a few physical injuries and that the doctor informed them that there was an injury on the head.
9. PW6 was Inspector Evelyn Jemeli, who testified that she in charge of Crime Scene Investigations, Eldoret. She stated that on 27/11/2020, she visited the crime scene at Yamumbi where there was someone suspected of having been killed, they found someone who was lying in a house dead, he had visible bruises on the face and he had discharge from his mouth and nose, that she examined the scene by taking photographs, that they show the residence and where he was lying on the mattress on the floor, that she certified the photographs which were 10. She stated that the scene had not been tampered with because the body was still on the mattress. In cross-examination, she stated that from the photographs, one cannot tell the nature of the injuries. She also stated that there was no blood at the scene and that hers was only to document the scene but not make conclusions.
10. PW7 was Sergeant Sophia Ibrahim Hassan, attached at Eldoret South, Langas Police Station. She testified that she is the Investigating Officer in this matter, that on 27/10/2020, she received a phone call from the OCS Yamumbi informing her that an incident had happened at Mutamaiyo-Yamumbi, that there was a dead body in a house within the area where the cause of the death was the subject of investigations, that she proceeded to the scene and on arrival, she found the OCS already there and together they accessed the house where the body was lying, that the immediate neighbours identified the body as that of the deceased, she was together with other officers, at the scene they also found traffic officers as it was near where they man a roadblock and that the accused was also at the scene as she had been arrested by the neighbours. She stated that they secured the scene, the body was lying in the deceased's room which he shared with his partner- the accused, the body was on a mattress and was covered, it had some bruises that were visible on the hands and around the cheeks, she then contacted the Scene of Crime Department, PW6 came and documented the scene, they interrogated the persons at the scene who had been in touch with the deceased and they established that he had been last seen on the night of 24/10/2020 with the accused, they then removed the body, took it to hospital and took the accused person to Langas Police Station, and that healthwise, the accused was fine.
11. She stated further that she then singled out witnesses whose statements she recorded, that the accused alleged that the deceased sustained the injuries after an attack that was unreported, they found the explanation unconvincing as the accused alleged that the attack had occurred at Kipkaren but from witness' statements however, the witnesses had given an account of how the deceased was seen with the accused on the night of 24/10/2020 when they went to a neighbour (PW4) to request for keys to access their house, PW4's father (PW3) also confirmed that his son (PW3) came over and informed him that the accused and the deceased had come to request for keys because they had been attacked and lost some including keys, and that the deceased was the landlord of the property and PW3 was one his tenants. PW7 testified further that after compiling the evidence, she arraigned the accused before Court to enable them carry out further investigations, the Court gave them 7 days to hold the accused in custody, a post-mortem was conducted and it determined that the deceased died of severe head injuries, that she was present during the post-mortem and the COVID test was also positive. She stated that she then forwarded the file to the Office of the Deputy Public Prosecutor (ODPP) which recommended that the accused be charged with murder, and she then charged the accused. She also stated that she established that the accused and the deceased had been cohabiting as partners.
12. In cross-examination, PW7 stated that since the alleged mugging was not reported, she formed the view that it never happened but conceded that she did not carry out investigations to establish whether the attack had actually happened. She stated that the accused's explanation was scanty, that the accused



stayed in the cells for 3 days then complained of some pain, they took her to hospital where she was treated and also given a P3 Report, that the accused must have sustained the injuries before she arrested her, that she had bruises on the ears and forehead, that according to the P3 Report, the accused was hit with a blunt object and from the post-mortem report, the cause of death of the deceased was severe head injury due to blunt force trauma consistent with assault. She conceded that both the deceased and the accused suffered head injuries. She stated further that the deceased was about 162 cm about the same height as the accused, the deceased was 23 years old and there was no evidence that the deceased was intoxicated, that no toxicology samples were taken because the deceased was COVID positive, that she did not establish evidence of any domestic violence between the deceased and the accused.

13. PW7 was later recalled to produce the accused's person's P3 Report. She stated that the findings in the P3 Form were that the accused sustained injuries on the forehead and on the left ear, that the Report was signed on 30/10/2020. In cross-examination, she confirmed that the approximate age of the injuries suffered by the accused was about 6 days which period was consistent with the date of the alleged attack of 24/10/2020.
14. PW8 was Stephen Gichohi Ngigirigi. He testified that the deceased was his neighbour and the accused was the girlfriend to the deceased, that his uncle (PW3) operated a rented firewood-selling stall which PW8 used to help to open in the morning since PW8 lived nearby, that this is what he had gone to do on 27/10.2020, that when he reached there around 7:00am, he found the accused there, the accused came out and told him that the deceased was unwell, that from the stall one could gain entry to the house occupied by the deceased and the accused since they were in the same building, when he peeped through the door, he saw the deceased lying on the mattress, they came out and consulted a neighbour, other neighbours came and upon looking at the deceased, stated that he was not alive, they went outside and saw Traffic Police Officers and informed them, the officers came and confirmed that the deceased was dead, they then called officers from Yamumbi Police station who came later. He stated that the Traffic Officers had detained the accused and so she was still there with them.
15. After close of the Prosecution case, I gave the parties liberty to file written Submissions for my consideration before I made a Ruling on whether a case to answer had been established. However, by the time of concluding this Ruling, neither of the parties had filed any Submissions

Determination

16. 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 Shitandi & 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."
17. Further, in the case of *Republic Vs. Jones Mutua Anthony & 3 Others* (2019) eKLR, Odunga J (as he then was) Court expressed himself as follows:
 8. 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 can convict if the accused chose to give no evidence. It was therefore held in *Ronald Nyaga Kiura Vs. Republic* [2018] eKLR wherein paragraph 22 it is stated as follows:

"It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that a



prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the *Criminal Procedure Code*. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person. This is well illustrated in the cited Court of Appeal case of *Ramanlal Bhat -vs- Republic* [1957] EA 332. At that stage of the proceedings the trial court does not concern itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence.”

18. The procedure in determination of whether an accused has a case to answer was discussed in the case of *Republic -V- Samuel Karanja Kiria* (2009) eKLR where Justice J.B Ojwang (as he then was) stated as follows:

“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 if 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.”

19. One of the questions that has arisen after hearing the testimonies of the prosecution witnesses is whether the death of the deceased was as a result of an alleged attack by robbers a few days before his death and which was never reported to the authorities, or whether the accused, having been the last person seen with the deceased alive and being his alleged girlfriend with whom they were cohabiting, had anything to do with the death. The consequent question is therefore whether the accused is innocent or whether she is using the alleged attack by muggers as a smokescreen.
20. The above are serious questions that need to be answered and laid to rest and the appropriate way for this to be achieved is to give the accused the opportunity to shed light on the matters alleged, of course this is only should she wish to exercise that right so. I therefore take the view that the evidence adduced by the prosecution suffices for the accused to be placed on her defence and I so do.
21. I therefore find that the accused has a case to answer. She is accordingly informed, in the presence of her Advocate, that she has a right to address the Court as provided 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*, that she can do so either personally or by her Advocate or give evidence on her own behalf or make unsworn statement and call witnesses in her defence. The accused is now therefore requested to make her election.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 1ST DAY OF MARCH 2024

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WANANDA J.R. ANURO



JUDGE

