



Director of Public Prosecutions v Lenemita alias Willy Samson Lesingira alias Yusuf Kerow & 4 others (Criminal Case 29 of 2019) [2024] KEHC 5522 (KLR) (18 April 2024) (Ruling)

Neutral citation: [2024] KEHC 5522 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 29 OF 2019
TW CHERERE, J
APRIL 18, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS PROSECUTOR

AND

**LTANINGOI LENEMITA ALIAS WILLY SAMSON LESINGIRA ALIAS YUSUF
KEROW 1ST ACCUSED
SIKITAAT LEPARMORIJO ALIAS LENTOOK 2ND ACCUSED
PETER MITIRAN LEKOLUA 3RD ACCUSED
RAELI LENNGO ALIAS LEPHARIARI 4TH ACCUSED
LOCHUKU LEKEPIE 5TH ACCUSED**

RULING

1. Ltaningoi Lenemita alias Willy Samson Lesingira alias Yusuf Kerow, Sikitaat Leparmorijo alias Lentook, Peter Mitiran Lekolua, Raeli Lenngo alias Lephariari, and Lochuku Lekepie are jointly charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#).

The particulars of the information are that on the night of 23rd and 24th July, 2015 at Mlima Chui in Oldonyoro, Isiolo North sub-county within Isiolo County murdered Morris Munene Mate

2. Accused persons denied committing the offence and the prosecution called a total of nineteen (19) witnesses in support of their case.
3. Section 306(1) of the [Criminal Procedure Code](#) provides as hereunder:

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.

4. At this stage, the court is being called upon to decide whether or not the prosecution has made out a *prima facie* case against the accused persons that would warrant this court to call upon them to give their defence. In *Republic v Abdi Ibrahim Owl* [2013] eKLR a *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. 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.”

5. I have considered the evidence tendered by the nineteen (19) prosecution witnesses and I am persuaded that a *prima facie* case has been established that warrants this court to call upon the Accused 5 to defend himself.
6. Under Section 306(1) of the *Criminal Procedure Code* and for reasons to be given later in the judgment, Accused 1, 2, 3 and 4 are found NOT GUILTY and are hereby set at liberty unless otherwise lawfully held.

**DELIVERED AT MERU THIS 18th DAY OF April 2024

WAMAE. T. W. CHERERE**

JUDGE

Appearances

**Court Assistants - Kinoti/Munene

Accused 1 - Present

Accused 2 - Present

Accused 3 - Present

Accused 4 - Present

Accused 5 - Present

For Accused 1 - Ms. Nelima/Mr. Igweta Advocate

For Accused 2 & 5 - Ms. Nelima/Mr. Igweta Advocate



For Accused 3 - Mr. Otieno C. Advocate

For Accused 4 - Mr. Lekoona Advocate

For DPP - Ms. Rita Rotich (PC-1)**

