



**Republic v Waweru (Criminal Case 3 of 2020) [2024] KEHC 3731 (KLR) (17 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3731 (KLR)

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

**CRIMINAL CASE 3 OF 2020**

**F GIKONYO, J**

**APRIL 17, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**BENSON WAWERU ..... RESPONDENT**

**RULING**

1. The accused person herein, Benson Waweru Alias Mwangi, was charged with the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars were that on 14.04.2020 at Kojongaa Village in Narok East Sub-county within Narok County, murdered Patrick Leshan (hereinafter referred to as the deceased)
2. The prosecution's case summarizes that on 13.04.2020, the deceased was sent by his grandmother to collect the battery to a phone at his aunt's place (Josephine Seii). He arrived at his aunt's home but his aunt told him to go back home and tell them that the battery was in the cupboard. The child never went back home to pass on the information. When the child failed to show up, they made a thorough search in all neighbouring homes and calls to homes they suspected he might have gone to. The efforts yielded no results.
3. John Ndung'u called Sina stating that he met the boy coming from his aunt's place. He told him to go home and wear shoes and follow him to the grazing area. The body of the boy was found in the maize plantation belonging to one Ronang'a. The deceased had been beheaded.
4. The accused had been separated from the mother of the deceased for about two weeks prior to the incident. Some items were recovered knife, gumboots, and a long trouser. The items had blood on them.
5. A message written by Mwangi to one Naipano Kasaini to the effect that, 'Ngoojeeni Nikiuliwa ukweli' 'hataamini but nitasema venye niliana wa onyo nimepewa asubuhi' ' niko safe. Nitakwambia mwenye walikuwa na mtoo', was also part of the evidence.



6. Mwangi surrendered himself to the police station stating that he feared the public may attack him on suspicion of killing the boy as he was cohabiting with his mother police officer searched the accused's house and found black gumboots under his bed. The gumboots had blood stains on them. They searched the toilet and recovered blue jeans trousers. They went to the hotel where the accused worked and retrieved a Maasai simi. The body was taken to Narok Mortuary

## **Analysis and Determination.**

### **The framework**

7. At this stage, the court is to establish whether, on the basis of the evidence adduced by the prosecution, a prima facie case has been made out against the accused as to warrant placing of the accused person on his defence to the charge of Murder.
8. The exercise is conducted within the logic that, the burden of proof lies on the Prosecution throughout the trial to prove the charge against the accused person. And, the burden never shifts to the accused person. The accused person continues to enjoy constitutionally guaranteed rights, which include, the right to remain silent, the right to adduce and challenge evidence, the right to presumption of innocence and the right not to give any incriminating evidence.
9. Has the prosecution established a prima facie case against the accused?
10. A prima facie case refers to 'the establishment of a legally required rebuttable presumption.' (*Black's Law Dictionary, R vs Abdi Ibrahim Owi* [2013] eKLR,). Thus, an accused person ought not to be placed on his defense where the evidence of the prosecution as is cannot found a conviction. See *Ramanlal Trambaklal Bhatt vs R* [1957] E.A 332 at 335,
11. See also Section 306 (1) of the *Criminal Procedure Code*, that:

“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.”
12. The trial court, should, however, be careful, not to make definitive findings where it concludes that the accused has a case to answer.
13. See *Festo Wandera Mukando vs Republic* [1980] KLR 103, the court held:

“...we draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, and an extreme case, may require an appellate court to set aside an otherwise sound judgment. Where a submission of “no case” to answer is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the count or counts concerned.”
14. This court has considered the testimonies of the seven prosecution witnesses.
15. The evidence is substantially circumstantial. The accused surrendered himself to the police for fear of being attacked. The police recovered some blood-stained items. Without delving into the depths of their testimonies, this court is satisfied that the Prosecution has established a prima facie case against the accused person.



16. Accordingly, the accused has a case to answer and he is therefore placed on his defence.
17. The provisions of section 306(2) of the *Criminal Procedure Code* and article 50(2)(i)(j)(k) of the *Constitution* are hereby explained to the accused person in the presence of his advocate Mr. Langat.
18. It is so ordered.

Dated, Signed, and Delivered at Narok Through Microsoft Teams Online Application The 17<sup>th</sup> Day of April, 2024.

.....  
**Hon. F. Gikonyo M.**

**Judge**

**In the presence of: -**

PARAGRAPH 1.

**The accused**

PARAGRAPH 2.

**Defence counsel, Mr. Langat**

PARAGRAPH 3.

**Ms. Rakama for DPP**

PARA 4.

Otolo C/A

NAROK HC CR NO. 3 OF 2020 Page 2 of 2

