



**Director of Public Prosecutions v Gitonga (Criminal Case
E066 of 2022) [2024] KEHC 5601 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5601 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E066 OF 2022
TW CHERERE, J
MAY 9, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS PROSECUTION

AND

ANTONY GITONGA ACCUSED

RULING

1. Antony Gitonga (Accused) was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) in that with others not before the court they murdered one Paul Karuti on 19th September, 2022.
2. Accused person denied committing the offence and the prosecution called a total of three (3) witnesses in support of their case.
3. Under 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 matter comes up for determination on whether a prima facie case to warrant the accused person to be placed on his defence to answer to the charge of Murder
5. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court of law to return a guilty verdict even if the accused opts to remain silent.



6. The evidence on record reveals that the prosecution case is wholly dependent on Karuti's dying declaration as narrated by the first witness who stated that on 19th September, 2022, he found Paul Karuti (Karuti) lying in the shamba writhing in pain and he said he had been assaulted by Antony, Karuti, Kithia and Muthomi.
7. No doubt Accused is not the only person named Antony. Karuti did not specifically name Accused as one of the persons that assaulted him. On the other hand, prosecution failed to lead evidence to demonstrate that the person named as Antony by Karuti was no other than Antony Gitonga, Accused herein.
8. Having considered the testimonies of the three prosecution witnesses, I am satisfied that a prima facie case has not been established to warrant Accused to be placed on his defence.
9. Consequently, under the Provisions of Section 306 (1) of the *Criminal Procedure Code*, Accused is hereby found not guilty and it is ordered that he be set at liberty unless otherwise lawfully held.

DELIVERED AT MERU THIS 09th DAY OF May 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

Accused - Present

For the Accused - Ms. Mukaburu Advocate

For DPP - Ms. Rita Rotich (PC 1)

