



**Director of Public Prosecutions v Kimathi (Criminal Case  
33 of 2020) [2024] KEHC 4878 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4878 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE 33 OF 2020  
TW CHERERE, J  
MAY 9, 2024**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... PROSECUTION**

**AND**

**AMENDEO KIRIANKI KIMATHI ..... ACCUSED**

**RULING**

1. Amendeo Kirianki Kimathi is charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#) an offence that was committed against one Samwel Gitonga on 21<sup>st</sup> December, 2018. .
2. Accused denied committing the offence and the prosecution called a total of four (4) 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 that would warrant this court to call upon him to give his defence.
5. 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, 8<sup>th</sup> 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.”

6. I have considered the evidence tendered by the four (4) prosecution witnesses and I am persuaded that a prima facie case has been established that warrants this court to call upon the Accused to defend himself.
7. 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 Ms. Thuo

**DELIVERED AT MERU THIS 09<sup>TH</sup> DAY OF MAY 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

Accused - Present

For Accused - Ms. Thuo Advocate

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

