



REPUBLIC OF KENYA



Republic v Kikwai (Criminal Case 4 of 2019) [2024] KEHC 5943 (KLR) (15 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5943 (KLR)

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

CRIMINAL CASE 4 OF 2019

F GIKONYO, J

MAY 15, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

PAUL KIKWAI RESPONDENT

RULING

Case to answer

1. The accused person herein, Paul Kikwai, 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 09.02.2019 at Chepkutbei Village in Narok County, murdered Nicholas Koros (hereinafter referred to as the deceased)
2. The prosecution's case is that, on 09/02/2019, the deceased and Robert went to PW1's house at 11.00 a.m. and requested to have a cell phone charged. They also requested for changaa on credit. They drank changaa worth Kshs. 250/=. Each cup of changaa cost Kshs. 50/=. They drank five cups.
3. At about 9.00 p.m. the deceased left for his home to get money to pay for the changaa. He left Robert behind.
4. PW1 went to herd cattle with her husband PW2. Wesley and Paul found them herding cattle and inquired if PW1 had changaa. She confirmed she had changaa. She accompanied them to her house to give them changaa. The deceased arrived at around 5.00 p.m to pay the debt.
5. The deceased paid his debt while outside PW1's house. PW1 gave him his phone which was charging. The accused paid Kshs. 200/= outside the house. The deceased asked the accused for his Kshs. 50. The accused told him that the money was for the posho mill.
6. The accused left PW1's house and was followed by the deceased. The deceased got hold of the accused's shirt. The deceased hit the accused on the head with a fist. PW1 called out for her husband PW2 who was herding cattle. PW2 went with the cattle. PW2 separated the two who were fighting. He led the



accused to the road leading to his home. The accused then asked for his jembe from PW1. Robert (PW3) escorted the deceased to a different route/road. On the way, they saw the accused following them. He was running after them. When he went closer, he called the deceased to stop and wait for him. The accused raised the jembe and cut the deceased on the head. PW3 returned to PW1's home to inform them of what had happened. He told her that the deceased had been cut. They rushed to the scene with her husband and Robert. The scene was about 200 meters from PW1's home. They found young children about 12 years old. The children were screaming. They saw the deceased lying down and bleeding from the head. The time was about 7.00 p.m. PW2 arrested the accused. The village elder (PW4) arrived and tied the accused with a rope and took him to his home.

7. The following day they received a call that the deceased had passed on. The police visited the scene. They found a jembe.

Analysis And Determination.

8. At this stage, this court is to determine whether, on the basis of the evidence adduced by the eight prosecution witnesses, the prosecution has established a *prima facie* case to warrant the accused person to be placed on his defence to answer to the charge of Murder.
9. Always, the burden of proof lies with the Prosecution throughout the trial to prove their case against the accused person. That burden never shifts to the accused person. The logic here is on the basis of the rights of the accused person to be presumed innocent until the contrary is proved, the right to remain silent, the right not to give any incriminating evidence, amongst others.
10. In this context therefore, the accused person will not be placed on his defense where the prosecution has not adduced evidence on which a court may convict if no further evidence is adduced. (*Ramanlal Trambaklal Bhatt vs R* [1957] E.A 332 at 335)
11. And, 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.”
12. Defining ‘prima facie’ is quite problematic, and this is evidenced in the long string of judicial cases which have attempted to define this legal term.
13. Nevertheless, the court is content that:

‘Prima facie’ is a Latin word defined by [Black’s Law Dictionary](#) 8th Edition as, ‘sufficient to establish a fact or raise presumption unless disapproved or rebutted’. ‘Prima facie’ is defined by the same dictionary as ‘the establishment of a legally required rebuttable presumption.’ (*Republic vs Abdi Ibrahim Owi* [2013] eKLR)
14. A prima facie case is, therefore, established where the evidence tendered by the Prosecution is, in the absence of any explanations by the accused, sufficient for a court of law to return a guilty verdict.
15. The trial court is, however, cautioned that, at this stage, it should not make definitive findings should it conclude that the accused has a case to answer.



16. Having considered the testimonies of the seven prosecution witnesses, and this court properly directing itself on the law and evidence, the prosecution has established a prima facie case against the accused.
17. Therefore, the court finds that the accused has a case to answer and is placed on his defense.
18. 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. Nchoe.
19. It is so ordered

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION, THIS 15TH DAY OF MAY, 2024.

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F. GIKONYO M

JUDGE

In the presence of: -

Ms. Nchoe for the accused

Ms. Rakama for DPP

Otolo C/A

