



REPUBLIC OF KENYA



KENYA LAW
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Director of Public Prosecutions v Mbuyi & another (Criminal Case E075 of 2022) [2024] KEHC 7038 (KLR) (6 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7038 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E075 OF 2022
TW CHERERE, J
JUNE 6, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS PROSECUTOR

AND

ANDREW MURIITHI MBUI 1ST ACCUSED

PATRICK GIKUNDI LAIBU 2ND ACCUSED

RULING

1. Andrew Muriithi Mbuyi and Patrick Gikundi Laibu are charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#).

The particulars of the charge are that on the night between 29th and 30th July, 2028, at Matiru village, Athwana location in Tigania West Sub County within Meru jointly with others not court within Meru County murdered Isaack Karigori Nchebere

2. Accused persons denied committing the offence and the prosecution called a total of seven (7) 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 vs. 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 seven (7) prosecution witnesses and I am persuaded that a *prima facie* case has been established that warrants this court to call upon both Accused persons to defend themselves.
6. Accordingly, the Accused persons will proceed as provided under Section 306 (2) of the *Criminal Procedure Code*.

DELIVERED IN MERU THIS 06TH DAY OF JUNE 2024

WAMAE. T. W. CHERERE

JUDGE

Court Assistants - Kinoti/Munene

Accused 1& 2 - Present

For the Accused persons - Mr. Thuo Advocate

For DPP - Ms. Rotich (PC-1)

