



REPUBLIC OF KENYA



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**Republic v Mwangi (Criminal Case 28 of 2016)
[2024] KEHC 7572 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7572 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 28 OF 2016**

**HM NYAGA, J
JUNE 20, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

REUBEN KIMANI MWANGI ACCUSED

RULING

1. The Accused Reuben Kimani Mwangi was charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. It was alleged that on the 19th May, 2016 at Wanyororo B in Nakuru North Sub County within Nakuru County, he murdered Tabitha Wanjiru Kimani.
2. The charge was read to him on 18th July, 2016 and he pleaded not guilty. Thereafter trial ensued with prosecution calling a total of 4 witnesses in support of its case.
3. PW1 was Dr. Titus Ngulungu, a pathologist attached to Provincial General Hospital. He recalled that on 24th May, 2016 he examined the body of the deceased herein and externally, he noted there were features of blood loss (Pallor) lacerations at the back of the head measuring 20 x 20mm; Visible Compound fracture at the back of the head; lacerations on the feet between big toe measuring 30 mm. Upon internal examination, he noted compound fracture on the back of the head and brain lacerations. He formed an opinion that the cause of death was severe head injury attended by compound fracture of the head and brain laceration due to blunt force trauma. He produced the Post Mortem Report as P. Exhibit 1.
4. PW2 was Grace Wanjiku Mutuma. She testified that on 19th May, 2016 at around 1. 00p.m she was at home. She heard screams and went outside where she saw a crowd in a Shamba. She went there and one person told her that ‘cucu’ had been injured and the attacker fled. She said ‘cucu’ had injury on the head and on the toe. She said she helped the deceased get to the hospital but she passed away while



- undergoing treatment. She stated she did not see the see Kimani at the scene and that ‘cucu’ was known as Tabitha Wanjiru.
5. In cross examination, she stated that she had known the accused for a long time and did not have any issues with him. She said the accused lived with his parents and the deceased.
 6. PW3 was Lucy Wanjiru. She stated that on 19th May, 2016 before 1.00pm she was in her shamba with her friends. She heard screams and she ran to the scene. She said a crowd gathered and someone told her that ‘cucu’ had been killed. She saw the deceased. She said she was bleeding and had deep cut on the head and another one on the leg. It was her testimony that they secured a motor cycle that took the deceased to the hospital but she passed away while undergoing treatment.
 7. In cross examination, she confirmed she did not witness the incident and that the deceased did not speak on their way to the hospital.
 8. PW4 was IP Kennedy Mutunga from Bahati Police Station. He testified that he took over this matter from PC Juma Kisea who retired. He said it was reported that the deceased had been attacked by her grandson using a Jembe. Neighbours went to the scene and took the deceased to the hospital but she was pronounced dead on arrival. He said the police visited the scene. He said the accused was arrested at Maili Saba by villagers and that he had been severely beaten but he was secured by the police officers and later charged in court. It was his testimony that the Jembe used to attack the deceased was handed over to him but the accused’s clothes which had blood stains were retained as Exhibits. He produced a Jembe as P. Exhibit 2.
 9. In cross examination, he said that there were witnesses who responded to the deceased’s distress calls and that the accused was alone with the deceased at the time of the incident. He stated that it was alleged that the two argued but he couldn’t tell what it was about. He confirmed that no photographs of the scene were taken. He stated that unfortunately the accused’s clothes got misplaced and they were not handed to him.
 10. After PW4 testified, the prosecution closed its case.
 11. Upon the close of the prosecution case, neither the defence counsel nor the prosecutor presented any submissions.

Analysis & Determination

12. At this stage the court is to determine whether the prosecution has made out a prima facie case to require the accused person to be put on his defence.
13. Under section 306(1) of the Criminal Procedure Code, when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is no evidence that the accused person committed the offence the court should, 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.
14. Under section 306(2) on the other hand, when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is evidence that the accused person committed the offence, the court should proceed to put the accused to his defence and inform him of his right to call evidence in support of his case



15. What then is a prima facie case? The test of this was settled in the case of *Ramanlal T. Bhatt vs Republic* [1957] E.A. 332 where the court expressed itself 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.”

16. 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.

17. The court should therefore determine whether, based on the evidence placed before, it can convict the accused person if he chose not to give any evidence, as he is entitled to by the law.

18. It is imperative to note that “proof beyond reasonable doubt” is not the standard applicable to the finding of existence of a prima facie case for the purpose of a case to answer.

19. In *May vs. O’Sullivan* [1955] 92 CLR 654 it was therefore held that:

“When at the close of the case for the prosecution a submission is made that there is no case to answer, the question to be decided is not whether on the evidence as it stands the defendant ought to be convicted, but whether on the evidence as it stands he could lawfully be convicted. This is a really question of law.”

20. I have carefully considered the evidence adduced by the prosecution witnesses. It must be appreciated that the burden of proof lies with the Prosecution throughout the trial to prove its case against the accused persons beyond reasonable doubt. That burden does not shift unto the accused persons whose rights to fair trial under Article 50(2) of *the Constitution* are guaranteed. Under Article 50(2) (a) of *the Constitution*, every accused person is presumed innocent until proven guilty. Among the guaranteed rights are the right to remain silent and not testify during proceedings, the right to adduce and challenge evidence; and the right not to give any self-incriminating evidence. In the case *Ronald Nyaga Kiura vs Republic* [2018] eKLR it was stated that:

“It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the Criminal Procedure Code. A prima facie case is established where the evidence



tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person. This is well illustrated in the cited Court of Appeal case of *RAMANLAL BHAT -VS- REPUBLIC* [1957] EA 332. At that stage of the proceedings the trial court does not concern itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence.”

21. In the instant case the death of the deceased is not in dispute. This fact was buttressed by the evidence of all prosecution witnesses. Additionally, the post mortem report that was produced as an exhibit shows that the deceased died as a result of head injury due to blunt head trauma.
22. Equally, flowing from the above, it is clear that the deceased’s death was not caused by natural causes.
23. From the evidence of the prosecution witnesses and excluding the doctor’s evidence, none of the witnesses testified that they saw the accused participate in the killing of the deceased. The police officer stated that it was reported that the accused attacked the deceased, that he was alone with the deceased at the time of the incident, that he was subjected to mob justice, arrested by villagers and that his blood stained clothes were retained as exhibits. This witness did not tell court who reported the incident and why the police officers who went to the scene did not record the evidence of any particular witness who witnessed the incident or subjected the accused to mob justice. His evidence therefore that the accused was alone with the deceased at the time of the incident was purely hearsay and cannot be relied on by this court. PW3 told the court that the accused lived with his parents and the deceased. Interestingly, the accused’s parents were not interrogated regarding the incident herein. The blood stained clothes purportedly belonging to the accused were not produced in evidence. Clearly there is no evidence tendered in court that connected with the unlawful killing of the deceased. The evidence by the witnesses that he was mentioned is all hearsay and cannot be used to incriminate the accused.
24. Further, there is evidence that there were blood stained clothes that were recovered from the accused, but they were not produced in court. The same were never taken to the Government Chemist for the requisite analysis.
25. In view of the above, it is patent that the Prosecution has not established whether by way of direct or circumstantial evidence, the involvement of the accused in the death of the deceased. Even if the accused was to remain silent upon being placed on his defence, this court would not make any finding of guilt against him.
26. I therefore opine that placing the accused on his defence is tantamount to shifting the burden of proof on him and asking him to prove his innocence.
27. I find and hold that the evidence adduced against the accused falls short of prima facie case to warrant him to be placed on his defence.
28. Accordingly, the accused is acquitted of the offence under Section 306(1) of the [Criminal Procedure Code](#) and is set at liberty unless otherwise lawfully held,
29. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 20TH DAY OF JUNE, 2024.

H. M. NYAGA,

JUDGE.

In the presence of;



C/A Jeniffer

Nancy for state

Mr. Ochang for accused

Accused present

