



**Republic v Mensire (Criminal Case E019 of 2021)  
[2024] KEHC 7463 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7463 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CRIMINAL CASE E019 OF 2021**

**WA OKWANY, J  
JUNE 11, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JAPHETH MOSAISI MENSIRE ..... ACCUSED**

**RULING**

1. The Accused person herein was charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of the offence were that on diverse dates between the 8<sup>th</sup> day of December 2019 and 16<sup>th</sup> day of December 2019, at Morara Village, Charachani sub-location, Keera Location in Nyamira South Sub-County within Nyamira County, jointly with others not before Court, murdered Kevin Ainda Nyaribari.
2. The Accused pleaded not guilty to the offence and a trial ensued in which the prosecution called a total of seven (7) witnesses in support of its case. The Prosecution’s case was that there was sufficient evidence pointing to the Accused person as the one who murdered the deceased by strangulation after he found the deceased committing an indecent act of bestiality with his goats.
3. The Prosecution closed its case on 14<sup>th</sup> May 2024. The parties did not file any submissions on case to answer.
4. I have considered the oral evidence presented by the prosecution together with the exhibits. Section 107 (1) of the [Evidence Act](#) Cap 80 of the Laws of Kenya provides that: -  
  
Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove those facts exist.
5. It is trite that the burden of proof in a criminal trial rests on the Prosecution. (See H.L. (E)\* [Woolmington v DPP](#) [1935] A.C 462 pp 481). It is therefore the duty of this Court to consider whether



a prima facie case has been established against the Accused person at the close of the Prosecution's case. Black's Law Dictionary, 8<sup>th</sup> Edition defines a prima facie case as:-

“Sufficient to establish a fact or raise a presumption unless disproved or rebutted.”

6. In *Ramanlal Trambaklal Bhatt v. R* [1957] E.A 332 at 335, the Court of Appeal aptly explained a prima facie case 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's case, the case is merely one in 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 .....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 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, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”.

7. The court is at this stage not expected to examine or analyze the evidence before it so as to determine whether the charge has been proved or not. The court is only expected to scrutinize the evidence and determine if a case has been made out against the accused person. This means that the court is required to determine if there exists a rebuttable presumption pointing to the guilt of the Accused person.
8. A reasoned decision on the guilt or innocence of the Accused person will be made at the judgement stage should the Accused be placed on his defence. [See *Republic v. Karanja Kiria*, Criminal Case Number 13 of 2004, Nairobi (2009) eKLR].
9. Section 306 of the Criminal Procedure Code provides that: -
- (1) 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 recording a finding of not guilty.
  - (2) When the evidence of the witnesses for the prosecution has been concluded the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court on his own behalf or make unsworn statement and to call witnesses in his defence.....
10. In the present case, I have analysed the evidence presented by the Prosecution and I find that they established a prima facie case against the accused herein. I accordingly, find that the Accused has a case to answer. He is therefore called upon to elect his mode of defence in accordance with section 306 of the Criminal Procedure Code.
11. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 11<sup>TH</sup> DAY OF JUNE 2024.**



**W. A. OKWANY**  
**JUDGE**

