



**Republic v Tuwei (Criminal Case E047 of 2021)
[2024] KEHC 8695 (KLR) (19 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8695 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E047 OF 2021
JRA WANANDA, J
JULY 19, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

STANLEY KIPLAGAT TUWEI ALIAS MSANII ACCUSED

RULING

1. The Accused 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 are that on 27/07/2021 at Marura village, Kaptuktuk sub-location, Koitoror location in Moiben sub-County within Uasin Gishu County.
2. The Accused is represented by Ms. Karuga, Advocate. He was arraigned on 10/08/2021 and took plea on 18/08/2021 before Hon. L. Kimaru J. Having pleaded not guilty, the matter proceeded to trial in which the prosecution called 7 witnesses before closing its case on 12/03/2024.
3. The evidence of the first 3 witnesses was taken before Hon. Ogola J. As the matter was therefore part-heard when I took it over, the parties requested, and I agreed, to proceed with it from where it had stopped. Accordingly, the provisions of Section 200(3) of the [Criminal Procedure Code](#) were complied with and the Defence informed the Court that it would not seek recall of any of the witness for examination. Pursuant thereto, I proceeded to take the evidence of the 4th-7th witness

Prosecution evidence

4. PW1 was Solomon Kiplagat Kanji. He stated that he is a village elder, that on 28/07/2021 at about 10 am, he received a telephone call informing him about the death of the deceased, that he rushed to the deceased's house and found many people and that the deceased was being removed from the house into a motor vehicle. He stated further that the husband (accused) was carrying the deceased who had blood on her right eye and a swollen face and the deceased was taken to hospital. He testified that later on the same date, he met the accused and asked him about the accident, that the accused told him that



- the deceased had died, that PW1 then telephoned the Assistant Chief who in turn, later arrested the accused and took him to the police. He stated further that he saw the body during the post-mortem exercise, and that the doctor told him that the deceased had been hit on the head.
5. PW2 was Daniel Chesire Koech. He stated that the deceased was his cousin, that he viewed the body at the mortuary and later also attended the post-mortem exercise. He stated that the deceased had an injury on the right side of her head and her head was swollen.
 6. PW3 was Faith Cheptanui. He stated that she works at the Marura Medical Clinic as a nurse, that on 28/07/2021, the accused came to the clinic and requested her to go to his house to attend to the accused's wife whom the accused said was unwell, that the accused's home was only about 200 metres and she agreed and went to the accused's house together with a neighbour. She stated further that when she reached the house, she found the deceased seated on the bed but was unconscious, that the deceased had visible injuries as her eye was swollen, and that she got a motor vehicle which took the deceased to hospital.
 7. PW4 was Maureen Chepchumba Sonkiyo. She stated that she was a neighbour of the deceased and the accused who were a couple, that on 27/07/2021, the deceased came and asked PW4 for a matchbox which she used to light a jiko, that around 11pm, PW4 saw the accused opening the gate as he had returned home, that in the morning, at around 10 am, the accused came to PW4's house and asked her to go and help him check whether the deceased "had gone" and that the accused then told her that the deceased had died. She stated further that the accused went to look for a nurse and came back with one, that they entered the house where they found the deceased seated on the bed but with her head facing the wall, that she did not respond when called out and that she had a swelling on the head and a bruise on the left eye. She testified further that a motor vehicle was then brought and which took the deceased to hospital. In cross-examination, she stated that she had lived with the couple as neighbours and that the couple had frequent fights.
 8. PW5 was Simon Kipkering Korir, the area Assistant Chief. He stated that on 28/07/2021, he received a telephone call from the area village elder who told him that a couple had fought at night and that in the morning, the wife was found badly injured, and that the wife was taken to the hospital but had died. He stated further that he reported the matter to the police and rushed to the couple's house when the neighbours alerted him that the husband (accused) had returned, and that when he entered the house, he noted evidence of disturbances. He stated further that he convinced the accused to accompany him to the police station which he did and that upon arrival there, the police interrogated the accused then arrested him.
 9. PW6 was Dr. Walter Nalinya, the pathologist who conducted the post mortem. He stated that the body had a swelling on the right side of the face with multiple bruises on the right orbital region, the eyelids were swollen and both hands had bruises, that on dissection, it was found that there was massive haemorrhage between the skin of the skull and the right side of the skull, massive blood on the surface of the brain and that the brain was compressed. According to her, the cause of death was severe head injury caused by assault.
 10. PW7 was Police Corporal Rosemary Nyokabi, the Investigating Officer in this matter. She stated that after the accused was arrested, she visited the scene (couple's house) on 29/07/2021 where she noted that there was a bed with blood stains, the house was disarranged, and the mattress also had blood stains. She stated that she recorded witness' statements and that from her investigations, she established that the couple had a fight on 27/07/2021 at around 2200 hours.
 11. After close of the Prosecution case, the parties were given liberty to file Submissions on the issue of "case to answer". However, I have not come across any Submissions filed by either of the parties.



Determination

12. Under Section 306 of the [Criminal Procedure Code](#), this Court is obligated, upon close of the prosecution's case, to give a Ruling on whether the Accused has a case to answer. Section 306(1) and (2) provide as follows:
 - (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"
13. At this juncture, what this Court is called upon is to determine whether, at this stage, based on the evidence adduced by the 7 witnesses, the Prosecution has established a prima facie case to warrant the Accused to be placed on his defence to answer to the charge of murder.
14. Needless to state, the burden of proof to establish the case against the Accused lies on the Prosecution throughout the trial. At no point does that burden shift to the Accused reason being that an Accused person's constitutionally guaranteed rights include the right to remain silent, the right to adduce and challenge evidence and the right not to give any incriminating evidence. However, at this stage, the prosecution is not expected to have proved the case beyond reasonable doubt. The measure is for a prima facie case to be established.
15. A prima facie case is established where the evidence tendered by the Prosecution is sufficient on its own for a Court of law to return a guilty verdict even if the Accused opts to remain silent. Hon. Lady Justice S.N. Mutuku in the case of [Republic vs Abdi Ibrahim Owi \[2013\]](#) eKLR, defined a prima facie case as follows:

“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.”
16. “Prima facie” therefore means the establishment of a rebuttable presumption that an Accused person is guilty of the offence he/she is charged with. In [Ramanlal Trambaklal Bhatt vs R \[1957\] E.A 332 at 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 true, as Wilson, J., said, that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. 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 tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”

17. The question that this Court has to deal with and answer at this stage is therefore, whether based on the evidence before it, the Court, after properly directing its mind to the law and evidence may, as opposed to will, convict if the accused chose to give no evidence. Limo J, in the case of [Ronald Nyaga Kiura Vs. Republic \(2018\)](#) eKLR, stated as follows:

“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 case 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 Bhatt 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.”

18. Trevelyan J, in [Festo Wandera Mukando Vs Republic \[1980\] KLR 103](#), Court held:

“... we draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgment. Where a submission of “no case” to answer is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the count or counts concerned.”

19. In this case, I have considered the evidence on record, the testimonies of the witnesses as set out above and also the Submissions filed. Without delving into the merits thereof, I only state my finding to be that the prosecution has established a prima facie case. Accordingly, I find that the accused has a case to answer.

20. Pursuant to my finding above, the accused is now informed of his rights under Article 50(2)(i) and (k) of [the Constitution](#) and also under Section 306(2) as read with Section 307 of the [Criminal Procedure Code](#) to address the Court. Accordingly, he is also informed and it is explained to him, in the presence of his Advocate, that he has a right to address the Court either personally or through his Advocate and to give evidence on his own behalf or to give unsworn statements, and to call witnesses in his defence.

21. The accused is therefore placed on his defence.



DELIVERED, DATED AND SIGNED AT ELDORET THIS 19TH DAY OF JULY 2024

.....

WANANDA J.R. ANURO

JUDGE

Delivered in the presence of:

Ms Limo for Respondent

Accused – Present in Court

N/A for Advocate

Court Assistant – Brian Kimathi

