



**Republic v Wambui alias Rasta (Criminal Case 41 of 2020)  
[2024] KEHC 11087 (KLR) (11 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11087 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE 41 OF 2020  
A MSHILA, J  
SEPTEMBER 11, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SAMUEL GACHOKA WAMBUI ALIAS RASTA ..... 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*; he was accused of having murdered David Ndungu Nyamwathi on the 12<sup>th</sup> October, 2020 at Thogoto, Kikuyu Sub-County within Kiambu County;
2. On the 3<sup>rd</sup> December, 2020 the accused entered a plea of Not Guilty; and the hearing of the matter commenced on the 14/12/2021; at the hearing hereof the accused was at all times represented by Learned Counsel Mr. Marube whereas Ms. Gacharia appeared for the Prosecuting Counsel for the State;
3. The prosecution called a total of nine (9) witnesses in support of its case; at the close of the prosecution case defence counsel was invited to make submissions as to whether the prosecution had made out a case that required the accused person to be called upon to defend himself;
4. Counsel for the accused made no submissions and stated that the defence was relying totally on the evidence already on record and the court should make its conclusion based on the same.
5. In response Prosecuting Counsel for the State submitted that the state was also relying on the evidence on record.
6. The case was partly heard by Ngetich J and also partly by Mulwa J this court was then seized of the matter when there were only two (2) remaining witnesses being the Scene of Crime Officer (PW8) and the Doctor (PW9) who performed the post-mortem. The court directed that the proceedings be typed



to assist this court in evaluating all the evidence on record on the four key elements of the offence that needed to be proved by the state; the key elements being that the deceased died; the cause of death; that the accused committed the unlawful act or their acts of omission led to the death of the deceased; and lastly whether the accused had malice aforethought; refer to the case of *Antony Ndegwa v Republic* (2014) eKLR;

7. Having perused the court record and in particular the evidence adduced by the prosecution on the several items recovered in possession of the accused a few days after the commission of the crime as listed in the Inventory; it is noted that evidence was tendered that the items belonged to the deceased and that the accused was an occupant of the room in which the items were recovered;
8. This is the scintilla of evidence that links the accused to the commission of the offence and this court is satisfied that the prosecution has established a *prima facie* case against the accused that warrants him being placed on his defence to answer to the charges; refer to the renowned case of *Bhatt v Republic* (1957);

### **Findings and Determination**

9. The accused is found to have a case to answer; his rights and options will be put to him for election before he presents his defence.
10. Mention on 4<sup>th</sup> November, 2024 to fix hearing date for defence case. Production order to issue Nairobi Remand.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 11<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**A. MSHILA**

**JUDGE**

In the presence of;

Mourice- Court Assistant

Marube for accused

Gacharia for the State

Accused absent

