



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Kinyua (Criminal Case 3 of 2019)  
[2023] KEHC 830 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 830 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CRIMINAL CASE 3 OF 2019  
FN MUCHEMI, J  
FEBRUARY 9, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**MARTIN THUMBI KINYUA ..... ACCUSED**

**RULING**

1. This is a ruling on whether the accused persons has a case to answer. The accused person faces a charge of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) to which he pleaded not guilty.
2. The prosecution called a total of eleven (11) witnesses and at the close of the case and the defence counsel Mr Kimani put in his submissions on no case to answer raising several issues.
3. The defence counsel argued that the prosecution failed to demonstrate that the accused caused the death of the deceased. He further argued that the deceased was a victim of mob justice and his wife and house girl both recorded their statements supporting the same but were never called as witnesses. Counsel further questioned why no witness from Kiamachibi Police Station was called to testify yet the accused person took the deceased to the said police station and reported the matter. Additionally, the issue of the credibility of witnesses was raised regarding relatives and that their evidence is inconsistent and contradictory between themselves and to that of PW4.
4. It is on record as submitted by the prosecution that four prosecution witnesses placed the accused person at the scene of the crime with one of them claiming to have witnessed the incident and saw the accused person hitting the deceased with a piece of firewood and at some point he tied the deceased to an electric post. PW2 and PW3 state that they never saw who injured the deceased but when they arrived at the scene, they saw the accused lying on the deceased's chest while attempting to pour paraffin on him from a hurricane lamp.



5. Having carefully perused the evidence of the prosecution witnesses, it is my considered view that the prosecution has established a *prima facie* case. The Court of Appeal held in the case of [Antony Njeru vs Republic](#) [2006] eKLR that:-

“Taking into account the evidence on record, what the learned Judge said in his ruling on no case to answer, the meaning of a *prima facie* case as stated in Bhatt’s (*supra*), we are of the view that the appellant should not have been called upon to defend himself as all the evidence was on record. It seems as if the appellant was required to fill in the gaps in the prosecution case. We wish to point out here that it is undesirable to give a reasoned ruling at the close of the prosecution case, as the learned Judge did here unless the court concerned is acquitting the accused person.”

6. Relying on the foregoing principle, I am of the considered view that it is not necessary at this stage to do the analysis of the evidence. The holding in the Antony Njeru case was intended to prevent a scenario where the court would pre-empt the case of the defence by delving into serious analysis of the evidence. As such, I find that the prosecution has established a *prima facie* case against the accused person. The accused person has a case to answer and is hereby called upon to give his defence.
7. Consequently I find that the prosecution has established a *prima facie* case against the accused person. The accused person has a case to answer and is hereby called upon to give his defence.
8. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**F MUCHEMI**

**JUDGE**

**RULING DELIVERED THROUGH VIDEOLINK THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2023**

