



**Republic v Nkarichia & 2 others (Criminal Case 68 of 2016)  
[2023] KEHC 892 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 892 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE 68 OF 2016  
TW CHERERE, J  
FEBRUARY 9, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ROMANO NKARICHIA ..... 1<sup>ST</sup> ACCUSED**

**DOMIANO MUTABARI ..... 2<sup>ND</sup> ACCUSED**

**JOSEPH MIRITHO ..... 3<sup>RD</sup> ACCUSED**

**RULING**

- 1. Romano Nkarichia, Domiano Mutabari Antony Kirimi and Joseph Miritho (accused 1, 2 and 3 respectively) are charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

The particulars of the charge are that on the night between 29<sup>th</sup> and July 30, 2028, at Matiru village, Athwana location in Tigania West Sub County within Meru jointly with others not court within Meru County murdered Isaack Karigori Nchebere

- 2. Accused persons denied committing the offence and the prosecution called a total of six (6) witnesses in support of their case.

- 3. Section 306(1) of the Criminal Procedure Code provides as hereunder:

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, record a finding of not guilty.



4. At this stage, the court is being called upon to decide whether or not the prosecution has made out a prima facie case against the accused persons that would warrant this court to call upon them to give their defence. In *Republic v 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, 8<sup>th</sup> 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. In *Ramanlal Trambaklal Bhatt v R [1957] E.A 332 at 334 and 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 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.'

5. I have considered the evidence tendered by the six (6) prosecution witnesses and I am persuaded that a prima facie case has been established that warrants this court to call upon both accused persons to defend themselves.
6. Accordingly, the accused persons will proceed as provided under section 306 (2) of the Criminal Procedure Code.

**DATED THIS 09<sup>TH</sup> DAY OF FEBRUARY 2023**

**WAMAE TW CHERERE**

**JUDGE**

**Court Assistant - Kinoti**

**Accused 1, 2 & 3 - Present**

**For the Accused persons - Mr Omari Advocate**

**For the State - Ms Kitoto (PPC)**

