



**Republic v Kiruja (Criminal Case E019 of 2020)
[2023] KEHC 3408 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3408 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL CASE E019 OF 2020**

LW GITARI, J

APRIL 20, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

JULIUS KIRUJA ACCUSED

RULING

1. Julius Kiruja, the accused person herein, faces the charge of murder contrary to Section 203 as read with Section 204 of the Penal Code (Cap 63 of the Laws of Kenya). It is alleged that on January 19, 2020 at Kithino sub-location, Tunyai Location, Tharaka South sub-county within Tharaka-Nithi County, the accused unlawfully murdered one Cecilia Kagendo Kiruja.
2. The accused denied the charge and the trial began. The prosecution called a total of seven (7) witnesses in support of its case against the accused before closing their case on March 23, 2023.
3. At this stage, the Court is called upon to determine whether the accused has a case to answer. That is, whether the prosecution has established a *prima facie* case against the accused.
4. In the case of *Ramanlal T Bhatt v Republic* [1957] EA 332 the court in considering what constitutes a *prima facie* case stated as follows:

“(i)The onus is on the prosecution to prove its case beyond reasonable doubt and a *prima facie* case is not 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.

(ii)The question whether there is a case to answer cannot depend 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.”



A *prima facie* case is therefore one which a reasonable tribunal having addressed its mind to the law and the facts would convict if no other explanation is offered.

5. In the instant case, I have considered the evidence adduced by the prosecution. The same suffices for the accused to be informed that he has a case to answer. At this stage, the reason for this finding need not be given as giving reasons would amount to determining the case before giving the accused an opportunity to be heard. [See: in *Republic v Samuel Karanja Kiria* [2009] eKLR]
6. The only duty that this Court has, therefore, is to inform the accused persons that they have a case to answer and give them a chance to be heard. As such, I opine that the prosecution's case meets the threshold for establishing a *prima facie* case. The accused will therefore be called upon to give his defence as provided under Section 306(2) & 3 of the [Criminal Procedure Code](#) which provides:
 - (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, either personally or by his advocate(if any),to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.
 - (3) If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon him to enter upon his defence.”

The provision requires that the accused person be informed of the finding either on oath or unsworn. The accused has a case to answer and will be put on his defence as charged.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 20TH DAY OF APRIL

2023.

L.W. GITARI

JUDGE

