



**Republic v Kichirchir & 2 others (Criminal Case E072 of 2021)
[2023] KEHC 18426 (KLR) (5 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18426 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E072 OF 2021
RN NYAKUNDI, J
JUNE 5, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSPHAT KICHIRCHIR 1ST ACCUSED

GIDEON KIPRONO 2ND ACCUSED

LAMECK KIPKORIR 3RD ACCUSED

RULING

1. The accused persons were 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 December 16, 2021, at Bukwo Village, Ngenyiel location, Turbo Sub County, within Uasin Gishu County, the accused persons jointly murdered Nelson Kipleting.
2. The question that this court has to deal with and answer at this stage is, whether based on the evidence before this Court, the Court after properly directing its mind to the law and the evidence may, as opposed to will, convict if the accused chose to give no evidence. In *Ronald Nyaga Kiura vs Republic* [2018] eKLR the court held 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 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 R Amanlal Bhat -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.”

3. Under section 306 of the Criminal Procedure Code Cap 75 Laws of Kenya, this court has a duty, upon close of the prosecution’s case, to make a ruling or a decision on whether an accused person has a case to answer or not. Under section 306(1), when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is no evidence that the accused person committed the offence should, 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. Having considered the material placed before me I am satisfied that the prosecution has established a *prima facie* case for the purposes of a finding that the accused has a case to answer. It is apparent from the evidence adduced by PW1, PW2, PW3, PW4 & PW5 that the motion of no case to answer has been dislodged by the sufficiency of circumstantial value chain testimonies as to the occurrence of the offence in question. Nothing contained in the evidence by the prosecution which shall be held to be inconsistent with the elements of the offence of murder as prescribed in Section 203 of the Penal Code. The only conclusion at this stage is to call upon the accused persons to state their defence under Section 306 (2) and 307 of the CPC on the July 17, 2023.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 5TH DAY OF JUNE 2023

In the Presence of:

Mr. Mugun for the State

Mr. Miyianda Advocate

Accused Present

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R. NYAKUNDI

JUDGE

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