



**Republic v Lepapai (Criminal Case E016 of 2021)
[2023] KEHC 21592 (KLR) (17 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21592 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL CASE E016 OF 2021
SN MUTUKU, J
JULY 17, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

FREDRICK TERATI LEPAPAI ACCUSED

RULING

1. Fredrick Terati Lepapai is 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 February 10, 2021 at Bisil Township in Kajiado Central sub-county within Kajiado County unlawfully killed Daniel Kitasho.
2. The prosecution closed its case after calling eight (8) witnesses in support of their case. Before placing the accused on his defence the law under section 306 of the *Criminal Procedure Code*, requires that the court scrutinizes all the evidence by the prosecution to determine whether a case has been made out against the accused person to require him to be called upon to give his defence.
3. In *Republic v Abdi Ibrahim Owl* [2013] eKLR, the court defined a *prima facie* case as follows:

“*Prima facie*’ is a latin word defined by Black’s Law Dictionary 8th Edition as, “sufficient to establish a fact or raise presumption unless disapproved or rebutted”.

‘*Prima facie*’ is defined by the same dictionary as “the establishment of a legally required rebuttable presumption.”
4. In *Ronald Nyaga Kiura vs Republic*, the court held:

“It is important to note that at the close of the Prosecution, what is required in law at this stage is for the trial court to satisfy itself that a *prima facie* case 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*...”.

5. From the evidence adduced by the Prosecution the deceased met his death on February 10, 2021. PW1, Lesaan Kitasho, the deceased brother testified that the deceased lived in Bisil and that he lived with a woman though they were not married; that he had been operating a butchery and that the deceased was stabbed at night while he was sleeping. He confirmed that he didn't remember the date when this happened. He stated that he was present when the postmortem was conducted and that the stab wound was on the left side of the chest. He didn't know the accused or whether he had a grudge against the deceased.
6. PW2, Samuel Milia Koitatoi, the deceased cousin testified that the deceased lived in Bisil and was playing football and doing casual jobs. That the deceased was living with his mother at the accused's plot. He testified that he knew the accused's parents but not the accused. It was his statement that on 17/2/2021 he attended the post-mortem at Kajjado Referral Hospital together with PW1 and a police officer. He confirmed that the stab wound perforated the deceased's heart.
7. PW3, David Sane, testified that he was the deceased's childhood friend, and he therefore knew him well. He stated that he knew the accused from seeing him in Bisil. That on 10/2/2021 the deceased was working at the butchery and later went home. That the deceased's home was opposite his house. That at around 8:00pm he heard screams from the deceased's house. He rushed there and found a lot of people. When he entered inside, he found the deceased lying on the bed with a stab wound on the chest.
8. He testified that the deceased was in bad shape. The deceased told him that the accused had stabbed him. He stated that they took the deceased to hospital and that he later died in hospital. It was his testimony that he didn't witness the stabbing.
9. PW4, Dr. Anthony Murigi testified that on 17/2/2021 he conducted the post-mortem on the body of the deceased at Kajjado Referral Hospital. He found the deceased's body pale due to loss of blood. He found a penetrating deep cut wound on the chest and on opening the chest he found massive blood around the heart and a wound was deep. He confirmed that the cause of death was heart attack due to deep chest injury caused by a sharp object piercing the heart.
10. PW8, Cpl. Timothy Chege, the investigating officer testified that upon conducting investigations he found that the deceased and accused were childhood friends who would spend nights at each other's house as they were neighbors. The deceased lived alone while the accused lived with his wife and child. It was his testimony that on 10/2/2021 a murder was reported at the station by PW3. The accused went into hiding for 4 months before he was arrested.
11. The question that this Honorable Court needs to answer is whether the prosecution has established a case against the accused. It is clear from the evidence that the accused and the deceased both lived in Bisil. That they were neighbours and childhood friends. That it was also common for them to spend the night at each other's house. That on the day of the murder they were together chewing miraa and drinking beer. There is evidence that the deceased told PW3 that the deceased had stabbed him.
12. After carefully considering the evidence tendered, I am persuaded that a *Prima facie* case has been established against the accused person requiring him to make a defence. Section 306(2) of the *Criminal Procedure Code* provides that:

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.

13. In compliance with the above section, it is my finding that the accused has a case to answer. He is hereby informed of his right to address the court and give evidence in his defence. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 17TH DAY OF JULY 2023.

S. N. MUTUKU

JUDGE

