Republic v Kagendo & another (Criminal Case E007 of 2021)
[2023] KEHC 20707 (KLR) (13 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20707 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT CHUKA

CRIMINAL CASE E007 OF 2021

LW GITARI, J

JULY 13, 2023

BETWEEN

REPUBLIC ..... PROSECUTOR

AND

PURITY KAGENDO ..... 1ST ACCUSED

JAPHET KINYUA MBOANI ..... 2ND ACCUSED

RULING

1. The two accused person are charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* (Chapter 63 of the Law of Kenya). The particulars of the offence are that on February 4, 2021 at Kaanwa Market in Meru South Sub-County within Tharaka Nithi County, the accused persons murdered one Dominic NJagi Muthigani.

   The accused pleaded not guilty to the charge

2. The prosecution called a total of seven (7) witnesses in support of the case against the accused persons before closing their case on June 20, 2021.

3. Under Section 306 of the *Criminal Procedure Code* (Chapter 75 of the Laws of Kenya) this Court has a duty, upon close of the prosecution's case, to make a ruling on whether the accused person has a case to answer or not. In other words, the question for this court to determine at this stage is whether the prosecution has made out a *prima facie* case against the accused persons sufficient enough to warrant this court to put them on their defence pursuant to the provisions of Section 211 of the Criminal Procedure Code.

4. The leading authority on what constitutes a prima facie case is the case of *Ramanlal T Bhatt -v- Republic* [1957] E A 332 where the court 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."

5. In this case, it is the prosecution's case that the deceased had gone to revel with his son in the house of the 1st Accused where the 1st Accused was selling local brew. That the accused persons, who are man and wife, attacked the deceased and grievously injured him and robbed him of Kshs 10,000/=. The deceased was then escorted to Chuka Hospital where he was treated but succumbed to the injuries. The accused were hen arrested and charged with this offence.

6. I have considered the evidence adduced so far from the prosecution's side. It is not farfetched to rule that the accused persons have a case to answer. At this stage, the Court is not to minutely examine the said evidence and make a conclusive determination as to whether the accused stands convicted or not. Accordingly, I opine that based on the evidence as presented by the prosecution, the accused persons ought to be placed on their defence. As to whether the said evidence on record meet the threshold for convicting the accused is a matter that will have to be considered at the end of the trial.

7. I find that there is sufficient evidence to warrant the accused to be called upon to address the court in their defence in a sworn or unsworn evidence and to call witnesses.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 13TH DAY OF JULY 2023.

L.W. GITARI

JUDGE