



**Republic v Kiania & 4 others (Criminal Case 7 of 2018)  
[2023] KEHC 20708 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20708 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CRIMINAL CASE 7 OF 2018**

**LW GITARI, J  
JULY 6, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ALFRED MUTHENGI KIANIA ..... 1<sup>ST</sup> ACCUSED**

**VIRGINIA KAURA GERALD ..... 2<sup>ND</sup> ACCUSED**

**ERICK KINYUA MUTEGI ..... 3<sup>RD</sup> ACCUSED**

**JOSEPH KANAMPIU KIANIA ..... 4<sup>TH</sup> ACCUSED**

**KIRONGO KANAMPIU RIUCIANI ..... 5<sup>TH</sup> ACCUSED**

**RULING**

1. The accused persons herein have been 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 January 9, 2018, the accused persons, jointly with others not before the court, murdered James Mboko Kaburuge and one Francis Iguna M’Nyiro at Kamuteria Sub-location in Kanjuki Location within Tharaka Nithi County.
2. All the accused persons denied the charge and the matter proceeded to trial with the prosecution calling a total of 9 (nine) witnesses in support of its case against the accused persons before closing its case on April 17, 2023.
3. The question for this court to determine at this stage is whether the prosecution has made out a prima facie case against the accused person and if so, whether the same is sufficient enough to warrant this court to put them on their defence pursuant to the provisions of Section 306 of the *Criminal Procedure Code*. In other words, it is for this court to determine whether the prosecution’s case, may possibly succeed on its own, though not necessarily.



4. The leading authority on what constitutes a prima facie case is the case of *Ramanlal T Bhatt -v- Republic [1957] EA 332*. In that case, the court defined a prima facie case as one which a reasonable tribunal properly addressing its mind to the law and evidence, could convict if no explanation is offered by the defence.
5. In the instant case, it is the duty of this court to evaluate the testimonies the nine (9) prosecution witnesses against the charge of murder that the accused person is facing. Having considered the testimonies of the said witnesses and the exhibits produced in court, it is my view that the said evidence meets the threshold that was set out in the case of *Bhatt -v- R(supra)* in respect of determining whether an accused has a case to answer.
6. As is was held in the case *Republic -v- Samuel Karanja Kiria [2009] eKLR*, no reasons need to be given for this finding at this stage as this court is yet to hear the explanation of the accused person. Giving reasons would amount to determining the case without giving them an opportunity to be heard.
7. It is therefore sufficient at this stage to inform the accused persons whether they have a case to answer and give them a chance to be heard. I have considered the evidence adduced. I find that the prosecution has made out a case to warrant the accused to be called upon to give their defence as provided under Section 306(2) of the Criminal Procedure Code by addressing the court either in an unsworn statement or on oath.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 6<sup>TH</sup> DAY OF JULY, 2023.**

**L.W. GITARI**

**JUDGE**

Ms Mukaburu holding brief for Mr. Kijaru for 3<sup>rd</sup>, 2<sup>nd</sup> accused

Mr. Mwiti for 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused

The ruling has been read out in open court.

