



**State v Wanjiru & another (Criminal Case 8 of 2018)  
[2023] KEHC 22319 (KLR) (20 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22319 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE 8 OF 2018  
PM MULWA, J  
SEPTEMBER 20, 2023**

**BETWEEN**

**STATE ..... PROSECUTOR**

**AND**

**DERRICK SHAURI WANJIRU ..... 1<sup>ST</sup> ACCUSED**

**PETER MACHARIA MWANGI ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The accused persons herein Derrick Shauri Wanjiru and Peter Macharia Mwangi were jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the information were that on 25<sup>th</sup> December 2017, at Makongeni Phase 4 area, Thika West sub-county within Kiambu county murdered Lucy Nyambura Kaniaru.
2. They denied commission of the offence. The prosecution called a total of 9 witnesses and closed their case.
3. Both the state and accused counsel did not wish to submit at this stage and urged the court to rely on the evidence on record.
4. The court is called upon to determine whether the prosecution has made out a prima facie case to warrant the accused persons to be placed on their defence.
5. A prima facie case is established where the evidence tendered by the prosecution is sufficient to convict an accused person even where he/she offers no defence.
6. It is the prosecution's case that the deceased sustained stab wounds at her home compound and was pronounced dead on arrival at the hospital. The accused person was identified by Pw3 who told the court he saw the deceased standing and arguing with two men.



7. The crucial elements of murder to be proved by the prosecution are:
  - i. Facts of death
  - ii. The cause of death
  - iii. Proof that in causing the death the accused committed it with malice aforethought.
  - iv. The evidence on record positioning the accused person as the one who killed the deceased.
8. The prosecution has proved that Lucy Nyambura is dead as per the post-mortem report, adduced by Pw4. According to the post-mortem report, the cause of death was internal haemorrhage due to multiple stab wounds on the abdominal and chest.
9. On the element of death being caused by the accused persons none of the prosecution's 9 witnesses witnessed the incident of stabbing. The evidence of Pw1, Pw2, Pw5 and Pw6 only indicates they were in their houses when they heard a scream and on going outside found the deceased lying on the ground. The prosecution witnesses stated the deceased could not talk at the time they found her lying on the ground. None of the witnesses could give a proper account of how the deceased met her death. Pw1, Pw2, Pw5 and Pw6 did not identify the accused persons. They could not link the accused persons or any other person to the murder of the deceased. They only confirmed to the court that Lucy was dead. They did not witness any stabbing or confrontation before the deceased met her death.
10. Pw9, the investigating officer told the court he received the suspect, that is the 1<sup>st</sup> accused on 7<sup>th</sup> January 2018 after Pw3 wrote his statement. Upon recording the statement of Pw3, the investigating officer stated that he changed the charges preferred against the accused persons from preparing to commit a felony to that of murder.
11. Pw3, the only witness who purportedly saw the deceased standing with two gentlemen did not witness any stabbing. He told the court he was on a motorbike when he saw the deceased arguing with two people. On the second account he said while on a bodaboda, he saw people helping the deceased. This court finds the evidence of Pw3 was inconsistent. The time when the deceased was being helped Pw1, Pw2, Pw5 and Pw6 were already at the scene of crime.
12. It is also important to note that Pw3 told the court he did not stop at the scene. Pw3 may have suspected the accused persons as he claims they were notorious/common criminals in the area.
13. Pw7 arrested the two accused persons on 7<sup>th</sup> January 2018 and charged them with the offence of preparing to commit a felony. But while in police custody, he overheard from colleague officers that the two were suspects in a murder case. He then preferred a murder charge against them.
14. In *Republic vs Wachira* [1975] EA 262, Trevelyan and Hancox, JJ stated the following: “[I]t has been settled for many years that the sufficiency or otherwise of the evidence at the close of the prosecution case, to require an accused to make his defence thereto, is a matter of law. A court is only entitled to acquit at that stage if there is no evidence of a material ingredient of the offence or if the prosecution has been so discredited and the evidence of their witnesses so incredible and untrustworthy that no reasonable tribunal, properly directing itself, could safely convict,...Apart from these two situations, a tribunal should not in general be called upon to reach a decision of conviction or acquittal until the whole of the evidence that either side wishes to tender has been placed before it. If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit, but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer.”



15. This court bases itself on the evidence tendered by the prosecution. I am not persuaded that the evidence so tendered links the two accused persons to the death of Lucy Nyambura. The court is still in doubt as to who killed Lucy. The prosecution in its evidence has failed to properly link the murder of the deceased to the accused persons.
16. The Court of Appeal in the case of *Anthony Njue Njeru vs. Republic* Crim. App. No. 77 of 2006 [2006] eKLR held that: “Taking into account the evidence on record, what the learned Judge said in his ruling on no case to answer, the meaning of a prima facie case as stated in Bhatt’s case..., we are of the view that the appellant should not have been called upon to defend himself as all the evidence was on record. It seems as if the appellant was required to fill in the gaps in the Prosecution evidence. We wish to point out here that it is undesirable to give a reasoned ruling at the close of the Prosecution case, as the learned Judge did here, unless the Court concerned is acquitting the accused.”
17. The parameters of establishing a prima facie case were clearly set out in *Republic vs. Galbraith* [1981] WLR 1039, thus;
  - “(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.
  - (2) The difficulty arises where there is some evidence, but it is of a tenuous character, for example, because of interment weakness or vagueness or because it is inconsistent with other evidence:
    - (a) where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.
    - (b) where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witnesses’ reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.”
18. The accused persons were charged with the offence of murder on a mere suspicion by Pw3 who claimed they were notorious criminals in the area. There is no direct or circumstantial evidence that links the accused persons to the murder.
19. The evidence brought by the prosecution leaves gaps for the defence to fill. This court will thus not shift the burden of proving the commission of the offence to the defence. At this stage, the prosecution ought to produce evidence that would incriminate the defence if they were to be put on their defence. The prosecution has failed to link the accused persons to the murder of Lucy.
20. In the circumstances, it is my finding that the prosecution has failed to establish a prima facie case warranting the accused persons to be placed on their defence.
21. I proceed to acquit the accused persons herein under section 306 (1) of the Criminal Procedure Code. The accused persons are to be set at liberty unless otherwise lawfully held.
22. It is so ordered.



**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 20<sup>TH</sup> DAY OF SEPTEMBER 2023.**

**P.M. MULWA**

**JUDGE**

In the presence of:

Mr. Muriuki - for the state/prosecution

N/A- for the 1<sup>st</sup> Accused person

Ms. Ndung'u h/b for Mr. Njuguna - for the 2<sup>nd</sup> Accused person

