



**Republic v Muthuri & another (Criminal Case E009 of 2023)  
[2024] KEHC 13853 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13853 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CRIMINAL CASE E009 OF 2023  
LW GITARI, J  
OCTOBER 17, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SILAS NJAGI MUTHURI ..... 1<sup>ST</sup> ACCUSED**

**BEATRICE KATHAMBI NJOKA ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The accused persons are charged with Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The particulars are that on 11/3/2023 at Kamweru village Igamba Ng'ombe Sub-County within Tharaka Nithi County the two accused jointly and lawfully murdered Harrison Kariuki Njagi.
3. The accused person denied the charge. The case proceeded to hearing and the prosecution called a total of five (5) witnesses and closed its case. This is a ruling as to whether the accused person have a case to answer. Section 306 of the [Criminal Procedure Code](#) provides as follows:-

306.

- (1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, 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.
- (2) 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.

(3) If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon him to enter upon his defence.”

4. It is the duty of this this court to determine whether the evidence advanced by the prosecution in support of their case is sufficient to show that the accused committed the offence, it shall inform them of their right to address the court in their defence.
5. In this case, the Counsel for the accused did not address the court at the close of the prosecution’s case. The prosecution’s Counsel did not address the court as well at the close of his case. This court can only rely on the evidence adduced by the prosecution to determine whether the accused should be called upon to address the court in their defence. At this stage the court is supposed to make a determination as to whether the prosecution has established a prima facie case to warrant the accused to be put on their defence. What constitutes a prima facie case was discussed in the leading authority in *Ramanlal Trambaklal Bhatt –v- Republic* (1957) E.A 332 where the court stated that a prima facie case is one on which a reasonable tribunal properly directing its mind to the law and evidence, could convict if no explanation is offered by the defence. It is also trite that if the court determines that a prima facie case has been made out, it should not give reasons as it would be determining the case without giving the accused person an opportunity to be heard and such reasons would prejudice the defence. This was so stated by the Court of Appeal in the case of Anthony Njue Njeru –v- Republic Criminal Appeal No. 77/2006. Giving reasons for the holding that a prima facie case has been established before giving an accused an opportunity to advance his defence may also tend to show that the court has made up its mind before hearing the defence which the accused has to offer.
6. I have considered the above authorities and the law as settled under Section 306 of the *Criminal Procedure Code* (supra). I come to conclusion that upon consideration of the evidence adduced by the prosecution, I find that a *prima facie* case has been established to warrant the accused persons to be placed on their defence. The accused have a case to answer and will opt to either adduce their evidence on oath in which case they shall be cross-examined by the prosecution. They may opt to give unsworn statutory statement in their defence or opt to keep quiet. They may also opt to have their counsel on record to address the court. The accused are also free to call witnesses.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 17<sup>TH</sup> DAY OF OCTOBER 2024.**

**L.W. GITARI**

**JUDGE**

