



**Republic v Ngeno & another (Criminal Case E054 of 2021)
[2024] KEHC 12403 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12403 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E054 OF 2021
JK SERGON, J
OCTOBER 17, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ERICK KIBET NGENO 1ST ACCUSED

NICHOLAS KIPKOECH NGENO 2ND ACCUSED

RULING

1. Erick Kibet Ngeno and Nicholas Kipkoech Ngeno the Accused Persons herein were charged with the information of Murder Contrary to Section 203 as read with 204 of the Penal Code. The Particulars of the information that on 17th day of September, 2021 at Kapsangai Village, Getarwet Location in Bureti Sub - County within Kericho County, jointly murdered Josephat Kimutai Korir.
2. On 30th September 2021 the accused persons took plea and pleaded not guilty to the charge of murder. The prosecution called eight (8) witnesses who testified in support of its case against the accused and thereafter closed its case.
3. At the time of writing this ruling, Learned Counsel representing the accused and Mr. Musyoki, the Learned Senior Assistant Director of Public Prosecution had not filed their submissions. Therefore this court solely considered the evidence tendered by prosecution in its determination on whether there is a case to answer on the part of the Accused.
4. This court considered the prosecution witness accounts. Pw. 2 testified that on the material day she witnessed an altercation between the accused persons who were her younger brothers and the deceased. Pw. 7 a medical doctor stated that he performed a post mortem on the deceased's body and his findings were that the cause of death was severe head injury secondary to trauma consistent with an assault. Pw. 8, the investigating officer, stated that while conducting investigations, he interrogated witnesses and



he recorded the statements which revealed that the deceased was assaulted by the accused (his in-laws) and that he had subsequently succumbed to the injuries sustained while undergoing treatment.

5. I find that the prosecution witness accounts place the accused at the scene of crime and revealed that on the material day, they assaulted the deceased who succumbed to the injuries suffered while undergoing medical treatment.
6. Having considered the testimonies of the eight (8) prosecution witnesses, the question is whether the evidence tendered established a prima facie case against the accused or whether the accused persons have a case to answer. In Republic v Abdi Ibrahim Owi [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.” whereas in Ronald Nyaga Kiura v Republic, the court held: “ It is important to note that at the close of the Prosecution’s case, 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...”
7. Having considered the material placed before me, I am satisfied that the prosecution has established a prima facie case for the purposes of a finding that the accused persons have a case to answer.
8. I accordingly place the accused persons on their defence under section 211 of the Criminal Procedure Code CAP 75 Laws of Kenya.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 17TH DAY OF OCTOBER, 2024.

J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Prosecutor - Musyoki

Accused Persons – Present in Person

Kirui for the 1st Accused

Mitey for the 2nd Accused

