



**Republic v Chepkwony (Criminal Case 28 of 2018)
[2024] KEHC 13430 (KLR) (16 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13430 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 28 OF 2018
RL KORIR, J
OCTOBER 16, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

BENARD CHEPKWONY ACCUSED

RULING

1. The Accused is charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars of the charge are that on 6th October 2018 at Besiobei sub-location in Konoin sub-county within Bomet County, he murdered Joseph Kimutai Koech.
2. The Accused took plea on 1st November 2018 before Muya *J.* and pleaded not guilty to the charge of murder. The Prosecution called seven (7) witnesses who testified in support of their case. The Prosecution's case was the Accused murdered Joseph Kimutai Koech by hitting him on the head causing a fatal injury.
3. The Prosecution filed its submissions dated 16th July 2024 on a case to answer. They submitted that their evidence proved Joseph Kimutai Koech's death and that the Accused had been positively identified as the perpetrator of the offence having been placed at the scene of crime. On the issue of malice aforethought, the Prosecution submitted that by implanting a dangerous weapon on the deceased's head, the Accused had the intention of killing the deceased.
4. At this stage of the proceedings the court is only required to establish whether a prima facie case against the Accused has been established by the Prosecution. Section 306 of the [Criminal Procedure Code](#) provides:-
 - (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.....
5. A prima facie case was defined in *Republic vs. Abdi Ibrahim Owl* (2013) eKLR as follows: -

“Prima facie” is a Latin word defined by *Black’s Law Dictionary*, 8th Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “Prima facie case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with. In *Ramanlal Trambaklal Bhatt v. R* [1957] E.A 332 at 334 and 335, the court stated as follows:

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is 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.” This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends 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...It is may not be easy to define what is meant by a “prima facie case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”

6. In determining whether the Prosecution has established a prima facie case against the Accused, I warn myself against making definitive findings at this stage of the trial. A well-reasoned decision as to the guilt or innocence of the Accused is a preserve of the Judgement, should the Accused be placed on his defence. The Court of Appeal in *Anthony Njue Njeru vs Republic* (2006) eKLR held that:-

“.....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 person.”

7. Thus, I have taken into consideration the evidence of the Prosecution in totality against the three ingredients of the offence of murder. It is my finding that the Prosecution has established a prima facie case and accordingly, the Accused has a case to answer. The Accused is hereby placed on his defence in accordance to section 211 of the *Criminal Procedure Code*.
8. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 16TH DAY OF OCTOBER, 2024.

R. LAGAT-KORIR

JUDGE



Ruling delivered in the presence of Mr. Waweru holding brief for Mr. Njeru for the state, Ms. Chirchir holding brief for Mr. Koskei for the Accused and Siele (Court Assistant).

