



**Republic v Gatobu & 3 others (Criminal Case 67 of 2016)
[2024] KEHC 15837 (KLR) (Crim) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15837 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 67 OF 2016
LN MUTENDE, J
DECEMBER 17, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

BONIFACE MUTUMA GATOBU 1ST ACCUSED

ISAAC TEMOI SOET 2ND ACCUSED

TOM MANYWANDA 3RD ACCUSED

STEPHEN MBUI MUCHAI 4TH ACCUSED

RULING

1. Boniface Mutuma Gatobu, Isaac Temoi Soet, Tom Manywanda and Stephen Mbui Muchai were arraigned to answer charges of murder. Particulars of the offence are that on the night of 22nd August, 2016, while at unknown place within the County of Nairobi, they murdered Job Nyambuya Omariba (Deceased). This was stated to have been in contravention of Section 203 as read with Section 204 of the *Penal code*.
2. Facts that can be gleaned from the prosecution case are that on 21st August, 2016 the deceased travelled from Meru to Nairobi with an intention of purchasing a motor vehicle, and PW9 Edwin Nyamache was to import the vehicle for him. He could not be reached on phone hence PW2 Lucy Nyabonyi his wife reported to Gaitu Police Station on 23rd August, 2016. It turned out that although PW9 had identified a vehicle for him to purchase he did not turn up as agreed.
3. PW1 Purity Kanja Josephat testified that she was used by the 1st accused to lure the deceased into a motor-vehicle Registration No. KBS 041A on 21st August, 2016 at about 4.30 pm having been



identified by the 1st accused. The motor-vehicle was driven by the 4th accused and inside the vehicle were 2nd and 3rd Accused. They were allegedly escorting the deceased to Kabete Police Station.

4. The subject vehicle's movement was captured by the integrated communication command control Centre from 21st to 23rd August, 2016.
5. Mortal remains of the deceased were found at Malili on 22nd August, 2016 which is along Nairobi-Mombasa Road. The vehicle was located having moved along the said road on the night of 21st August, 2016.
6. The Prosecution/State had the burden to establish the accused culpability. Therefore, to place the accused on their defence, evidence presented must be sufficient to support the case presented by the Director of Public Prosecutions. In *Bhatt v. R.* [1957] EA 332 the court stated that:

“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.”

7. Evidence adduced by the State relies on the inference to connect it to a conclusion of fact as it is not direct as to who committed the act or omission that resulted into the death of the deceased. But, the evidence is a collection interconnected pieces of evidence that has constructed a compelling case against the accused that require them to defend themselves as provided by Section 306 (2) of the [Criminal Procedure Code](#).
8. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 17TH DAY OF DECEMBER, 2024.

L. N. MUTENDE

JUDGE

