

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL CASE NO. 60 OF 2023

REPUBLIC.....

PROSECUTION

VERSUS

PRISCILLA WAIRIMU NJERU.....1ST

ACCUSED

GODFREY MURITHI GACHORA.....2ND

ACCUSED

ROSEMARY NKONGE.....3RD

ACCUSED

MARY MUTHONI KAMAU.....4TH

ACCUSED

RULING

1. The four accused persons are jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code to which he pleaded not guilty. The particulars of the offence are that on the night of 28th and 29th November 2015 at Ward 8C within Kenyatta National Hospital within Nairobi County jointly with others not before court murdered Cosmas Mutunga Kenyatta.
2. The prosecution called eighteen (18) witnesses supporting the case against the accused persons. The prosecution and accused persons filed written submissions which have been duly considered and there is no need to rehash them.
3. Under Section 306 of the Criminal Procedure Code, Cap 75 Laws of Kenya, this court has a duty, upon close of the prosecution's

case, to make a ruling on whether the accused person has a case to answer or not. It provides as follows:

(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 recording 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 on his own behalf or make unsworn statement and to call witnesses in his defence.

4. A definition of what amounts to a prima facie case was given in the case of **Bhatt vs R [1957] EA 332**. In that case, the Court of Appeal expressed itself on this issue:

“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 on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near to 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 true as Wilson J said that the Court is not required at that stage to decide finally whether the evidence is worthy of credit or whether if believed it is weighty enough to prove the case conclusively: That determination can only properly be made when the case for the defence has been heard. It 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."

5. At this stage of the proceedings, the standards applicable on whether a prima facie case has been made out is lower than the standard on beyond reasonable doubt, which applies at the conclusion of the full trial after the accused person has been heard. The strength of the evidence establishing a prima facie case must be the sort of evidence upon whose strength the court could convict if the defence says nothing to rebut such evidence.
6. I must hasten to add that by finding that the accused persons have a case to answer, it does not necessarily mean that the burden of proof shifts to the accused persons as this burden remains with the prosecution throughout the trial.
7. In **Republic vs Jones Mutua Anthony & 3 others [2019] eKLR**, Justice Odunga (as he then was) while weighing on the standard required for the Court to find that a prima facie case has been established stated as follows:

“...There is no magic in finding that there is a case to answer and a case to answer ought only to be found where the prosecution’s case, on its own, may possibly, though not necessarily, succeed. An accused person should not be put on his defence in the hope that he may prop up or give life to an otherwise hopeless case or a case that is dead on arrival...”
(Emphasis added).

8. Indeed, I agree with the above holding by the learned Judge in **Jones Mutua Antony & 3 others (supra).**
9. For the foregoing reasons, I will refrain from making conclusive findings on the guilt or otherwise of the 1st, 2nd, 3rd and 4th accused persons at this stage.
10. Having considered the evidence of the eighteen witnesses including expert witnesses and the material placed before me, I am satisfied that the prosecution has made out a prima facie case against the four accused persons.
11. I accordingly place the 1st accused, Priscilla Wairimu Njeru, the 2nd accused, Godfrey Murithi Gachora, the 3rd accused, Rosemary Nkonge, and the 4th accused, Mary Muthoni Kamau, on their defence under section 211 of the Criminal Procedure Code, Cap 75, Laws of Kenya.
Orders accordingly.

**Ruling dated and delivered virtually this 21st day of
October 2025**

**D. KAVEDZA
JUDGE**

In the presence of:

Kimaiti & Ombeta for the Accused persons

Timoi for the Prosecution

Karimi Court Assistant.

ORIGINAL