

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL CASE NO 11 OF 2017

REPUBLIC.....

.....PROSECUTOR

VERSUS

1. SAMUEL CHEGE NDEGWA

2. AMOS WAINAINA WILLIE

3. GEORGE WAWERU KINYANJUI.....

ACCUSED

R U L I N G

1. The Accused persons, **SAMUEL CHEGE NDEGWA, AMOS WAINAINA WILLIE** and **GEORGE WAWERU KINYANJUI** are charged with *murder* contrary to **section 203** as read with **Section 204** of the **Penal Code**. The particulars were that on the night of 24th and 25th December, 2017 at South Imenti area Mwejuria, Laikipia Central Sub-county within Laikipia County, jointly with others not before court murdered JUSTUS MWANGI GATHOGO.

2. The accused persons took plea on 20/01/2020 and they pleaded not guilty to the charge. The prosecution called

a total of eight (8) witnesses. In this ruling, the court is being called upon to decide whether or not the prosecution has made out a *prima facie* case against the accused persons that would warrant this court to call upon them to give their defence.

3. The prosecution filed written submissions dated 11/07/2025. Counsels for the accused persons chose not to submit. The prosecution's case is that the ingredients of murder have been proved beyond reasonable doubt as the direct and circumstantial evidence met the required threshold and actively linked the accused persons to the death of the deceased. That PW1, PW2 and PW4 saw the accused persons assaulting the deceased at the scene whereas PW3 and PW7 after going to the scene were able to appreciate what had happened. He submitted that the prosecution has satisfied the threshold required for the court to place the accused persons on their defence.

4. I have considered the evidence so far from the prosecution's side, the submissions by the prosecution and

the authorities cited. As I have stated above, the issue before me at this stage is whether the evidence so far adduced warrants calling upon the accused persons to defend themselves. In other words, does the accused persons have a case to answer? In **Republic vs. Abdi Ibrahim Owl [2013] eKLR** a *prima facie* case was defined 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."

5. The question that this court has to deal with and answer at this stage is therefore, whether based on the evidence before this Court, the court after properly directing its mind to the law and the evidence may convict if the accused persons chose to give no evidence. It was therefore held in **Ronald Nyaga Kiura vs. Republic [2018]** eKLR that;

"It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie 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. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person. This is well illustrated in the cited Court of Appeal case of RAMANLAL BHAT -VS- REPUBLIC [1957] EA 332. At that stage of the proceedings the trial court does not concern itself to the

standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence.”

6. It therefore follows that a case to answer ought only to be found where the prosecution’s case, on its own, may possibly, though not necessarily, succeed. Having considered the material placed before the court, it is my view that the prosecution has established a *prima facie* case for the purposes of a finding that the accused persons have a case to answer.

**Dated signed and delivered virtually this 9th day of
October 2025.**

A.K. NDUNG’U

JUDGE