



Republic v Chege (Criminal Case E744 of 2023) [2023] KEMC 258 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEMC 258 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CRIMINAL CASE E744 OF 2023
PA NDEGE, SPM
JULY 27, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

CHARLES GITAU CHEGE ACCUSED

RULING

1. The individuals in this criminal dispute, Jennifer Njeri Chege, the complainant who also testified herein as PW1 and a farmer from Naishi, and the Accused herein, Charles Gitau Chege, are siblings. It is the prosecution's case that on the material night, around 9.00pm., the accused went to their home as usual and found when the complainant was with her child, PW2, inside their mother's house. The complainant and her child, PW2, however decided to escape through the rear door and went to spend the night at their neighbour's house. It is again not clear whether the accused threatened them or not, and why they were escaping. They timed the following morning and confirmed that the accused had gone to work. They sneaked back, collected their belongings and went to stay with their cousin. They went to Naishi Police Station where they made the report to PW3, No 58576 CPL David Otieno, who after conducting investigations, was able to arrest the accused person on 18/03/2023 at 7.00pm while at the same home. A search conducted in the house yielded a panga that was alleged to have been used to commit the alleged offence of causing disturbance herein. It was produced as PEXH. No 1.
2. On 20.03.2023, the accused herein was charged with the offence of Creating Disturbance in a Manner Likely to Cause a Breach of Peace c/s 95(1)(b) of the *Penal Code*. He on the same day denied before me, that 15.03.2023 at Corner Mbaya Village, Njoro sub-County within Nakuru County, he created a disturbance in a manner likely to cause a breach of the peace by threatening Jennifer Njeri Chege while armed with a panga.



Issues, Burden and Standard of Proof

3. It is trite law that the burden of proof is always on the prosecution to prove its case beyond reasonable doubt. The main issue at this stage is whether the prosecution, in discharging this burden, has established a *prima facie* case that requires me to call upon the defendant herein to make his defence as required by section 211 of the [Criminal Procedure Code](#).
4. The case of [Republic v Kennedy Otieno & 6 others](#) (1998) eKLR, gave an explanation of what constitutes a *prima facie* case. The High Court held that it is a case where there is sufficient evidence upon which the court would convict the accused if no explanation is given.
5. The charge herein as framed and answered to by the defendant herein alleges that the accused herein 'created a disturbance, in a manner likely to cause a breach of peace, by threatening Jennifer Njeri Chege while armed with a panga'. For the prosecution to prove a *prima facie* case at this stage, it must be proving the act or acts of the accused that is alleged to have caused a disturbance in a manner likely to cause a breach of peace. The burden of proving the act or acts lies with the prosecution and the standard of proof is beyond reasonable doubt.

Determination

6. From the evidence of the witnesses herein, there is no doubt that both the accused and the complainants are siblings. It is not clear whether they were still staying at their mother's house, the scene of the alleged offence herein. Neither is it clear on the whereabouts of the alleged owner of the house – their mother. So, the presumption is that neither the accused nor the complainant had a superior right than the other to be in that house. If that be so, then I find no reason why the complainant herein refused to open for the accused the door to his mother's house. I just find no reason advanced by the complainant or the child, PW2, the only witnesses who had the direct and hence admissible evidence of what transpired on the material night herein, on why the complainant refused to open for the accused person. This refusal to open the door could have provoked the accused to break the door. Where was he supposed to spend? And could the complainant's refusal to open the door have provoked the accused to break the door?
7. Even then, I still find no evidence that the accused threatened the complainants herein that he would cut them with the panga as alleged. The evidence herein is that the complainant, for an undisclosed reason, refused to open the door to the accused, despite there being no evidence that the accused had no right to enter his mother's house.
8. The complainant's escaped away and it is not explained why he escaped. No direct evidence of threat has been disclosed herein. That could have come from the eye-witnesses herein and not the investigating officer whose evidence is not direct.
9. As at the close of the prosecution's case, several gaps have been left and I may not want to call the accused person herein to make his defence with gaps that have remained unexplained. I shall have shifted the burden of proof to him, so that to fill the gaps by explaining what he was doing there and why he had to break the door.
10. The High Court in [Republic v Kennedy Otieno & 6 others](#), *supra*, addressed the point as follows: -

It must be remembered that at the close of prosecution case, an accused has a right to keep silent in his defence. An accused person is brought to court by the prosecution. It is upon the prosecution to prove a case against an accused person beyond reasonable doubt. An accused



person is under no obligation to prove his innocence. The burden of proving his guilt lies on the prosecution.

11. Guided by the above decision, I do hereby find that no *prima facie* case has been disclosed to warrant the accused herein to be called upon to make his defence herein. The upshot is that I do hereby enter a finding of not guilty against the defendant herein.

Final Disposal Orders

12. I do therefore find no *prima facie* case disclosed herein and pursuant to the provisions of section 210 of the *Criminal Procedure Code*, I do hereby dismiss the charge against the accused herein and consequently do hereby acquit him of the offence of Threatening Breach of the Peace by Creating Disturbance in a Manner Likely to Cause a Breach of Peace c/s 95(1)(b) of the *Penal Code* as charged herein. He should therefore be released from custody forthwith unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 27th DAY OF July, 2023

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Court interpreter: Janet

Prosecutor: Chinga

Accused: Present

Victim: Absent

