



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

CRIMINAL CASE NO. 57 OF 2023

REPUBLIC PROSECUTOR

VERSUS

JOSEPH MBURU GITAU.....ACCUSED

RULING

1. Joseph Mburu Gitau is charged with murder contrary to section 203, as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 26th day of February 2021, at Turasha Location, in Kipipiri Sub-County within Nyandarua County, he murdered James Maina Njoroge.
3. When the assistant chief of Kiriko sublocation went to arrest a woman suspected of neglecting her children, accompanied by police officers, they found her in a bar with other patrons. A man who was in the bar stepped backwards. He slipped on the wet floor and sustained a fatal head injury. This was the gist of Samuel Karanja Kamenya's (PW1) evidence.
4. PW1 testified that he was in the company of PC Rose Chepkemoi (PW2) and CPL. Kirimi. PW2 testified that she was with CPL. Kirimi, on a familiarisation tour of the area. A crowd outside a bar drew their attention. They went and found the accused and PW1 holding a male person who was injured on the head. The accused told them that he was injured when he fell.
5. None of the four witnesses that were called linked the accused to the offence. After considering the evidence on record, the question is whether the prosecution has established a

prima facie case against the accused. In **Black's Law Dictionary, 10th Edition**, a prima facie case is defined as follows:

Prima facie case. (1805) I. The establishment of a legally required rebuttable presumption. 2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favour.

6. The Court of Appeal in the case of **Ramanlal Trambaklal Bhatt vs R [1957] E. A 332 at 334 and 335** defined a *prima facie* case as follows:

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.

7. Article 50 (2) (i) of the Constitution of Kenya provides:

***(2) Every accused person has the right to a fair trial, which includes the right—
(i) to remain silent, and not to testify during the proceedings;***

In this case, if the accused person chooses to exercise his constitutional rights, as previously mentioned, I cannot convict him based on the current evidence. Therefore, the prosecution has not established a prima facie case against him. I hereby acquit him of the charge of murder under section 306(1) of the Criminal Procedure Code. The accused is entitled to liberty unless they are lawfully detained for another reason.

Delivered and signed at Nyandarua, this 25th day of November 2025

**KIARIE WAWERU KIARIE
JUDGE**