

REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANGA

HIGH COURT CRIMINAL CASE NUMBER 22 OF 2014

REPUBLIC
.....PROSECUTOR

VERSUS

EDWIN MWANGI NDUNG’U.....
ACCUSED

RULING

1. This is a ruling on case to answer in accordance with section 211 of the CPC following the trial of *Edwin Mwangi Ndung’u* who was charged before this court with the offence of Murder contrary to **section 203 as read with section 204 of the Penal Code**. The particulars of the case are that on the 1st day of September 2014 at Mitanduguini Village in Gatanga Sub-County within Murang’a County the accused murdered Sarah Wambui Njoroge.
2. The accused pleaded not guilty and the matter proceeded for trial before Hon. Justice Wakiaga in 2021. The prosecution closed its case in 2022 after calling a total of eight (8) witnesses. The matter was set down for submissions on case to answer in 2023. Upon Judge Wakiaga’s transfer, the accused opted to proceed from where matter had stopped under **section 200 of the Criminal Procedure Code** before this court. During the trial, the accused person was represented by Ms. Wanyoike whereas Ms. Gakunu was the lead counsel for the prosecution.
3. As directed by the court, both parties filed submissions on no case to answer through their counsel.

4. Counsel for the Defence argued that the prosecution had failed to prove a *prima facie* case to warrant the accused to be placed on his defence as contemplated in **section 211 of the CPC**. Counsel pointed out among others, that the witnesses confirmed that no thorough investigations were conducted on this matter including identification of the murder weapon and the identity of the accused as the perpetrator in that no identification parade was conducted. It was pointed out that the key witnesses were not able to identify the exhibit that was purported to be the murder weapon and that no blood samples or clothes were subjected to testing by the government chemist to link the accused with the offence. Lastly, Counsel indicated that the some of the witnesses gave hearsay evidence which was not corroborated.

5. Counsel for the prosecution on the other hand submitted that they have established a *prima facie* case to warrant the accused to be placed on his defence as charged under section 306(2) if the CPC. He pointed out that the totality of the prosecution case proves the ingredients of the offence charged including the death of the deceased and the cause thereof, that the death was unlawful and that the accused was positively identified as the perpetrator.

6. The law requires of the trial court at the closure of the prosecution case to take into account the evidence to rule on whether a *prima facie* case has been made out to call upon the accused person to state his defence. The applicable provision is **section 306 of the Criminal Procedure Code** which provides that if at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused person sufficiently on all the elements of the offence, that require him to make a defence,

he/she may be acquitted or discharged of the said offence. However, if the prosecution evidence establishes the existence of evidence on the charge involving all the elements or any other inchoate offence the accused shall be called upon to state his/her defence.

7. 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”.

And as:

“The establishment of a legally required rebuttable presumption”.

8. The digest to the above is that the prosecution through its evidence should establish a rebuttal presumption that an accused person is guilty of the offence he/she is charged with. In the case of **Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335**, 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.”

9. The import of the above is that the weight of the evidence adduced by the prosecution should be sufficient to put the accused on his defence. It is neither about leaving gaps and hoping that the same will be filled by the defense nor that the court will not convict if no defense is made but rather, 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 defense. The above principle was also espoused in **Ronald Nyaga Kiura vs. Republic (2018) eKLR and Ramanlal Bhat -vs- Republic (1957) EA 332)**

10. In the instant case, I have reviewed the evidence of the prosecution witnesses in discharging the burden of proof vested upon the prosecution on the allegations made against the accused person. The central issues which are captured by the witnesses as it relates to this offence revolve around a dispute between the deceased and the accused about trees which belonged to the deceased and were allegedly cut and sold by the accused and that the deceased had made a report to the chief about the incident. The chief involved the *nyumba kumi* elders who were in the process of resolving the dispute when two days later, the deceased was body was discovered having been murdered in his house with a deep cut in his stomach.
11. There were also blood marks outside his door indicating that he had been dragged. The police gained access to the accused's house within the homestead, believing that he was responsible for the death of the deceased and recovered a bloodstained knife believed to be the murder weapon and sent it for analysis the government chemist. The government chemist report later confirmed that the DNA profile of the blood on the knife matched that of the blood sample collected from the deceased. The post mortem report revealed that the cause of death was "*internal bleeding due to stab wound.*"

12. Following the incident, the accused fled and was arrested three months later and was presented at Kangema Law Courts and later charged in this court.

13. I have considered the entirety of the prosecution evidence as summarized above and find that it meets the threshold for a *prima facie* case requiring the accused to be put to his defense. It is my view that at this stage, there is no basis for a reasoned ruling on a case to answer. I will therefore exercise my discretion to put the accused on his defense and reserve a reasoned ruling for the final judgement. I therefore find that the above summary at this juncture suffices for placing the accused on his defence.

14. Finally, I find that the prosecution has established a prima facie case against the accused. The accused has a case to answer and is placed on his defence.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 19TH DAY OF NOVEMBER, 2025.

**HON. T. W. Ouya
JUDGE**

For Accused.....Macharia HB Kariuki

For State.....Ms Manyal

COURT ASSISTANT.....Brian