



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIAMBU
CRIMINAL CASE (MURDER) NO. E006 OF 2023

REPUBLICPROSECUTION

VERSUS

MARK WAMALWA SONGWA.....

ACCUSED

RULING

1. The accused, **MARK WAMALWA SONGWA**, is charged with the offence of murder contrary to ***section 203 as read section 204 of the Penal Code***. It is alleged that on the night of 27th -28th day of January, 2023 at Limuru town, Limuru sub county within Kiambu County, he murdered **PETERSON WANJALA SONGWA**.
2. The prosecution called 3 witnesses in support of their case. PW1 the accused sister testified that she was called by her other sister and was informed that the accused person had been arrested over suspicion of murdering his child. She went to Tigoni police station to visit the accused

who denied the said allegations and later identified the deceased body before postmortem was carried out. She also confirmed that the child did not have any external injury and suspected that he might have died due to carbon monoxide poisoning since the parents had used a jiko to warm their house overnight.

3. PW2 Dr Eunice Mugwero, who conducted the post mortem stated that in her opinion the child died due to asphyxia, likely to have been caused by suffocation. She ruled out carbon monoxide poisoning as she did not see features of the same during her examination of the child's body. In cross examination she further confirmed that she was not able to confirm if the child had been suffocated by a person nor did she see any physical injuries or were there signs of strangulation. She could also not tell if the child's death was intentionally cause and/or was accidental.
4. PW3 the DCI officer who investigated the matter stated that from the information gathered during investigations, the accused and his wife occasionally had domestic disputes but were not separated. On 27.01.2023, the accused had arrived back in Limuru from Bungoma and joined his friends Cornelius Wanyonyi and Emmanuel Khaoya in partaking of Alcoholic spirits. At about 6.00pm they all went to the accused house, where his wife joined the party. At about 10.00pm, a fight broke out between the accused and his wife, both whom were drunk by then

and they were separated by their friends, who later left at about midnight.

5. At about 0400hrs it was alleged that the accused was seen carrying the child, while outside the house before returning with the said child inside and about 30 minutes later the accused wife started to scream that their child had died and neighbours who responded to the distress call confirmed the same.
6. The prosecution closed their case at that point and what the court is to determine is whether there is sufficient evidence to warrant placing the accused on his defence. In other words, does the accused 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.

7. 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.”

8. The question that this court has to deal with and answer at this stage is therefore, whether based on the prosecution

evidence presented, the Court after properly directing its mind to the law and the evidence may, as opposed to will, convict if the accused chose to give no evidence. It was therefore held in **Ronald Nyaga Kiura vs. Republic [2018] eKLR** wherein paragraph 22 it is stated as follows:

***“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 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.*”**

9. I have considered the evidence so far adduced the prosecution’s side and find that it does not establish a prima facie case against the accused herein. PW2 who conducted the autopsy in cross examination confirmed that the child had no physical injuries and could not establish how the child suffocated. In particular she stated that, “ ***the baby had no physical injury and was not struggled.***” PW3 evidence was based on hearsay. The court properly directing its mind on the evidence

presented cannot convict the accused, even if he opted to keep silent were he to be placed on his defence.

C. DISPOSTION

10. The upshot is that the prosecution have failed to establish a prima face case against the accused person herein **MARK WAMALWA SONGWA**, to warrant that he be placed on his defence and i do therefore acquit him of the murder charge faced under Section 306 (1) of the Criminal Procedure Code (CPC) for lack of evidence.
11. It is so ordered.

DATED, DELIVERED AND SIGNED AT KIAMBU THIS 12th DAY OF FEBRUARY, 2026.

**FRANCIS RAYOLA OLEL
JUDGE**

Delivered on the virtual platform, Team this **12th** day of **FEBRUARY, 2026**

In the presence of: -

..... **For Accused**

..... **For ODPP**

.....**Court Assistant**

ORIGINAL