



**Republic v Waithera & 2 others (Criminal Case E006 of 2023)
[2026] KEHC 5940 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5940 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL CASE E006 OF 2023
FN MUCHEMI, J
APRIL 30, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

VICTOR MUYA WAITHERA 1ST ACCUSED

GERALD KIHARA WAITHERA 2ND ACCUSED

ELIAS KAGAI NJUGUNA 3RD ACCUSED

RULING

1. This is a ruling on whether the accused persons have a case to answer. The accused persons were charged with the offence of murder contrary to Section 203 as read with 204 of the Penal Code. The particulars of the offence are that on 11/11/2023 at Kenyatta road kwa Maua area in Juja sub county within Kiambu County jointly with others not before the court murdered Francis Mbae Githiga. On 11/12/2023, the accused persons pleaded not guilty to the charge of murder.
2. The prosecution called eleven (11) witnesses and at the close of their case, the defence counsel Mr. Ngeresa opted not to put in submissions on no case to answer.
3. Having carefully perused the evidence of the prosecution witnesses, I am of the opinion that the prosecution has established a prima facie case. The Court of Appeal held in the case of Antony Njeru vs Republic [2006] eKLR that:-

We wish to point out here that it is undesirable to give a reasoned ruling at the close of the prosecution case, as the learned Judge did in this case, unless the court concerned is acquitting the accused person.”
4. Relying on that case, it is not necessary at this point to analyse the evidence of the prosecution witnesses at this stage. The holding the Court of Appeal in my view was intended to prevent a scenario where the court would pre-empt the case of the defence by giving a detailed ruling at this stage. As such, I hold



the opinion that the prosecution has established a prima facie case against each of the accused persons.
The accused persons have a case to answer and are hereby called upon to give their defence.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 30TH DAY OF
APRIL 20206.**

F. MUCHEMI

JUDGE

