

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE NO. 5 OF 2018

REPUBLIC.....

.....PROSECUTOR

VS

MARGARET NJERI

KAMONI.....ACCUSED

RULING

- 1.** The Accused person is charged with the offence Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on the 1st of March 2018, at Sportsman Arms Hotel within Nanyuki township in Laikipia East Sub-County within Laikipia County, the Accused murdered Caroline Nduta Chege (Hereinafter, 'the Deceased'.)
- 2.** The accused took plea on 11/04/2023 and she pleaded not guilty to the charge. The prosecution called a total of ten (10) witnesses. In this ruling, the court is being called upon to decide whether or not the prosecution has made out a prima

facie case against the accused that would warrant this court to call upon him to give her defence.

3. The prosecution has filed submissions on a case to answer dated 21/01/26. The defence chose not to put in a rejoinder at this stage.

4. The prosecution's case is that the fact and cause of death of the deceased was proved. Counsel reproduced the testimonies of the eighteen witnesses and urged that upon the close of the prosecution's case, the following facts were established;
 - a) That the Accused person had previous known differences with the deceased.

 - b) The deceased died as a result of penetrating abdominal injuries.

 - c) The Accused was the last person to be seen with the deceased while she was still alive and

d) It was the Accused who suggested where the deceased might be found, and almost in prophetic fashion, there her body was. Counsel submitted that the evidence discloses a prima facie case against the accused person.

5. Counsel cited sections 203 and 206 of the Penal Code and the case of *Bonaya Tutu Ipu & another v Republic* [2015] eKLR on malice aforethought. Further, Counsel urged the court to note that the deceased died of penetrative puncture wounds in the abdominal aorta as per PW10's testimony, and that the injuries inflicted upon the deceased therefore fit within the definition of malice aforethought as per Section 206 of the Penal Code and as defined in the *Bonaya Tutu Ipu* case. Further, that the conduct of an Accused can be taken in hindsight as indicative of their malice aforethought.

6. Additionally, counsel urged that the accused was the last person to be seen with the deceased alive and that after searching for the deceased for 24 hours, it is the Accused who pointed them towards the laundry area. He cited the Supreme Court case of *Republic v Mohammed & another*

[2019] KESC 48 (KLR) on admissions and urged that the circumstantial evidence presented shows an unbroken chain of events that point towards the guilt of the Accused person.

7. Counsel urged that a prima facie case has been established against the Accused.

8. I have considered the evidence so far from the prosecution's side, the submissions by the prosecution and the authorities cited. As stated above, the issue before me at this stage is whether the evidence so far adduced warrants calling upon the accused to defend himself. In other words, does the accused have a case to answer?

9. 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. 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."

10. Flowing from the fore going the germane question becomes whether based on the evidence before this Court, the court after properly directing its mind to the law and the evidence may convict if the accused chose to give no evidence. It was held in ***Ronald Nyaga Kiura vs. Republic [2018] eKLR*** that;

"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 a 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. This is well illustrated in the cited Court of Appeal case of Ramanlal Bhatt vs Republic [1957] EA 332. At that stage of the proceedings the trial court does not concern itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence.”

- 11.** It therefore follows that a case to answer ought only to be found where the prosecution’s case, on its own, may possibly, though not necessarily, succeed. Having considered the material placed before the court, it is my view that the

prosecution has established a prima facie case for the purposes of a finding that the accused has a case to answer.

12. Accordingly, the Accused is placed on her defence.

Dated signed and delivered virtually this 14th day of May

2026

A.K. NDUNG'U

JUDGE