



REPUBLIC OF KENYA



Mwangi v Republic (Criminal Case 17 of 2015) [2025] KEHC 7573 (KLR) (28 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7573 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE 17 OF 2015
CW GITHUA, J
MAY 28, 2025**

BETWEEN

TIMOTHY MAINA MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused, Timothy Maina Mwangi, was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars were that on the night of 7th April 2015, at Kigetuini village in Murang'a County, the accused murdered Grace Waruguru.
2. The court record shows that the accused was first arraigned in court 23rd April 2015 but he took plea on 30th April 2015 and denied the charges. His trial opened on 17th May 2016 before Hon. Waweru J who proceeded to hear a total of two witnesses. The case was taken over by two succeeding Judges namely Hon. Kimondo J on 12th February 2020 and Hon. Wakiaga J on 1st November 2021 but for reasons which are on record, none of the two judges heard any witness in the case.
3. I took over the hearing of this case on 24th April 2023 about four years later and unfortunately, despite giving the prosecution ample time and opportunity to procure attendance of its remaining witnesses, the prosecution only managed to avail one additional witness, namely PW3 whose sole purpose was to produce in evidence a post mortem report on behalf of the doctor who had conducted an autopsy on the deceased's body.
4. According to the evidence adduced by PW1 and PW2, on 7th April 2015, the body of the deceased was discovered in a well by PW1 who had gone to draw water from the well. The matter was reported to Baba Muthoni, the owner of the well who in turn informed the area chief. Police were called to the scene and took the body to the mortuary.
5. According to the evidence of PW3, an autopsy conducted on the deceased's body by Dr. Gachiri at the Muranga County Hospital Mortuary revealed that the deceased's cause of death was strangulation.



6. PW2's evidence only confirmed that the deceased's body was actually found in a well on 7th April 2015 which was about 1½ kms from her home. He was led to the well by the accused who was the deceased's husband and saw the body before it was retrieved by the police.
7. I have considered the evidence adduced by the prosecution together with the written submissions made on behalf of both parties. The issue for my determination at this stage is whether the prosecution has established a prima facie case to warrant the accused to be placed on his defence to defend himself against the charge of murder preferred against him in this case.
8. To determine whether or not the prosecution had established a prima facie case, it is important to first have an understanding of what constitutes a prima facie case. A Prima Facie case was defined in the case of Republic V Abdi Ibrahim Owl [2013] eKLR in which the court quoted with approval the definition given to the term in the celebrated case of Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 where the court had expressed itself as follows at page 334 ;

“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 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.”

See also: Ronald Nyaga Kiura versus Republic (2018) eKLR;

9. Given the evidence adduced by the prosecution in this case, can it be said that it meets the test of what constitutes a prima facie case? Put differently, can a reasonable tribunal properly directing its mind to the law and the evidence presented in this case convict the accused if he chose to remain silent if put on his defence?
10. In my considered view, the evidence adduced by the prosecution only proved the death of the deceased by strangulation but did not go further to prove the identity of the culprit who had committed the offence. PW1 and PW2 only found the deceased's body in the well in question but they did not know how the body landed in the well. And although their claim that the accused was the deceased's husband was not disputed by the defence, the fact that the accused was the deceased's husband cannot by itself amount to proof even prima facie, that the accused was the one who had murdered his wife. In a nutshell, the evidence adduced by the prosecution did not in any way link the accused to the commission of the offence.
11. In the premises, it is my finding that the prosecution has failed to establish a prima facie case against the accused requiring him to be put on his defence. In my opinion, putting the accused on his defence on the basis of the evidence on record would be tantamount to asking him to fill in the yawning gaps in the prosecution case.



12. For the foregoing reasons, I am satisfied that the accused does not have a case to answer. I consequently enter a finding of not guilty and acquit him accordingly under Section 306 (1) of the Criminal Procedure Code.

I direct that the accused be set at liberty forthwith unless otherwise lawfully held.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 28TH MAY 2025.

HON. C. W. GITHUA

JUDGE

In the presence of:

Mr. Macharia for Mr. Kimwere for Accused

Ms. Muriu for the State

Ms. Susan Waiganjo, Court Assistant

