



**Republic v M’Ikotha (Criminal Case 75 of 2015)
[2024] KEHC 777 (KLR) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 777 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 75 OF 2015
EM MURIITHI, J
JANUARY 31, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

NYUMOO M’IKOTHA ACCUSED

RULING

1. The accused is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence were that he “on the 9th day of September, 2015 at Antuambui Location in Igembe North Sub-County within Meru County jointly with another not before the court murderderd Richard Kaberia M’Ekotha.”
2. The accused person pleaded not guilty to the charge and the matter proceeded to trial, the prosecution calling 7 witnesses to prove the charge.
3. The Prosecution filed Written Submissions dated 8/10/2023 urging that it had by its witnesses established a *prima facie case* against the accused to warrant him being placed on is defence. The defence did not file any submissons.
4. The court has considered as required under section 306 of the *Criminal Procedure Code* whether there is the evidence that the accused person committed the offence. At this stage, the court considers the prosecution evidence to establish whether a *prima facie case* exists, which as held in *Ramanlal T. Bhatt v R* (1957) EA 332, 335 is “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.”
5. Where the court has considered that there is not established a *prima facie case*, the accused is entitled to an acquittal, see *Murimi v R* (1967) EA 542 and *Wachira v R* (1975) EA 262, and the Court is required to give full reasons for the decision.



6. Where the court finds that a prima facie case has been established as held in *Kibera Karimi v R* (1979) KLR 36 (Trevelyan & Todd JJ) the court is not required to give reasons for the finding so as not to prejudice the fair trial of the case by giving the impression that the court has already made up its mind without hearing the defence. See also *Festo Wandera Mukando v R* (1976 – 80) KLR 1626 and *Antony Njue Njeru v R*, Nairobi C.A. Cr. Appeal No. 77 of 2006 and the *Kenya Judiciary Criminal Procedure Benchbook*, 2018 at 99-100.
7. The court considers that there is the evidence that the accused person committed the offence, having regard to the elements of the offence of murder.

ORDERS

8. Consequently, the accused shall be put on his defence in accordance with section 306 (2) of the *Criminal Procedure Code*, and his rights thereunder shall be explained.

Order accordingly.

DATED AND DELIVERED ON THIS 31ST DAY OF JANUARY, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. Masila Principal Prosecution Counsel for the DPP.

Ms. Wambulwa for the Accused.

