



REPUBLIC OF KENYA



**KENYA LAW**  
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**Director of Public Prosecutions v Mwiti (Criminal Case E032 of 2021)  
[2024] KEHC 2254 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2254 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE E032 OF 2021  
TW CHERERE, J  
FEBRUARY 29, 2024**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... PROSECUTOR**

**AND**

**SAMSON MWITI ..... ACCUSED**

**RULING**

1. Samson Mwiti (Accused) is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code* in that he murdered one Barack Muchui on 16<sup>th</sup> October, 2019 at Kiromwathi Village Luciuti sub-location in Igembe North Sub County within Meru County.
2. The accused has denied committing the offence of Murder as charged and the prosecution has called a total of three witnesses and closed its case on 20<sup>th</sup> February, 2024.
3. This court is therefore called upon to determine whether, at this stage, based on the evidence adduced by the three prosecution witnesses, the prosecution has established a prima facie case to warrant the accused person to be placed on his defence to answer to the charge of Murder.
4. In *Ramanlal Trambaklal Bhatt v R* [1957] E.A 332 at 335, the court stated as follows:

“.....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, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”.
5. The first witness, a doctor stated that upon examining the body of Barack Muchui, an opinion was formed that he died of asphyxiation due to stuffing of the nostrils with soil. The second witness stated she did not know Barack Muchui and did not know- how he died. The third witness, a police officer took over the matter long after Accused was arrested and charged and did not know the circumstances under Barack Muchui died or the reasons behind Accused’s arrest and arraignment.



6. The High Court of Malaya in Criminal Appeal No 41LB-202-08/2013 – *Public Prosecution v Zainal Abidin B. Maidin & another* stated that:

“It is also worthwhile adding that the defence ought not to be called merely to clear or clarify doubts. See *Magendran a/l Mohan v Public Prosecutor* [2011] 6 MLJ 1; [2011] 1 CLJ 805. Further, in *Public Prosecutor v Saimin & others* [1971] 2 MLJ 16 Sharma J had occasion to observe:

‘It is the duty of the Prosecution to prove the charge against the accused beyond reasonable doubt and the court is not entitled merely for the sake of the joy of asking for an explanation or the gratification of knowing what the accused have got to say about the prosecution evidence to rule that there is a case for the accused to answer.’”

7. From the evidence on record, it is apparent that the witnesses do not know who killed Barack Muchui and therefore to put the Accused on his defence would be an exercise in futility for the evidence on record is such that it cannot sustain a conviction even in the event that Accused opts to remain silent.
8. Consequently, under the Provisions of Section 306 (1) of the *Criminal Procedure Code*, Accused is hereby found Not Guilty.

**DELIVERED AT MERU THIS 29TH DAY OF FEBRUARY 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

Accused - Present

For the Accused - Mr. Ng'entu Advocate

For the State - Ms. Rita Rotich (PC 1)

