



**Director of Public Prosecutions v Nkatha (Criminal Appeal
E010 of 2020) [2024] KEHC 1708 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1708 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E010 OF 2020
TW CHERERE, J
FEBRUARY 22, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS PROSECUTOR

AND

RUTH NKATHA ACCUSED

RULING

1. Ruth Nkatha (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 Kinyua on 27th September, 2020 at Manyatta Madina in Kinna Division within Garba Tulla Sub County within Isiolo County.
2. The accused has denied committing the offence of Murder as charged and the prosecution has called a total of seven witnesses and closed its case on 13th February, 2024.
3. This court is therefore called upon to determine whether, at this stage, based on the evidence adduced by the seven prosecution witnesses, the prosecution has established a prima facie case to warrant the accused person to be placed on her defence to answer to the charge of Murder.
4. In *Republic v Abdi Ibrahim Owi* [2013]eKLR, the court defined a prima facie case as follows:

“Prima facie’ is a latin word defined by Black’s Law Dictionary 8th Edition as, “sufficient to establish a fact or raise presumption unless disapproved or rebutted”. ‘Prima facie’ is defined by the same dictionary as “the establishment of a legally required rebuttable presumption.”
5. In *Ramanlal Trambaklal Bhatt v R* [1957] E.A 332 at 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’s case, the case is merely one in which on full consideration might possible 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 questionthere 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, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”.

6. A prima facie case is established where the evidence tendered by the Prosecution is sufficient on its own for a court of law to return a guilty verdict even if the accused opts to remain silent.
7. Having considered the testimonies of the seven prosecution witnesses, I am satisfied that a prima facie case has been established against to warrant Accused to be placed on his defence. I therefore find that the accused herein Ruth Nkatha has a case to answer and is therefore placed on her defence.
8. The provisions of Section 306(2) of the *Criminal Procedure Code* and Article 50(2)(i)(j)(k) of the *Constitution* are hereby explained to the accused person in the presence of her advocate Ms. Wambulwa.

DELIVERED AT MERU THIS 22ND DAY OF February 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

Accused - Present

For the Accused - Ms. Wambulwa Advocate

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

