



**Republic v Mwangi (Criminal Case E032 of 2021)
[2024] KEHC 6594 (KLR) (31 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6594 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL CASE E032 OF 2021**

MW MUIGAI, J

MAY 31, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

STANLEY MACHARIA MWANGI ACCUSED

RULING

Background

1. The accused herein Stanley Macharia Mwangi has been charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars being that the accused on the 6th day of October, 2021 at Lemma House in phase 2 area in Mlolongo Township in Athi River Sub- County , within Machakos County murdered Clinton Kivatse.
2. The Mental Assessments dated 1st December ,2021 and filed on 2nd December 2021 found the accused person Fit to plead. The Accused person herein took plea on 16th December 2021 whereof after the charges were read out to him in a language that he understood he said “si ukweli”. A plea of Not Guilty was entered on his behalf.
3. The Accused person was represented by Mrs Nyaata Advocate while the state was represented by Mr. Mwongera.
4. The hearing took off and the prosecution called a total of seven (7) witnesses.
5. Kevin Musira, PW1 told the court that the deceased was his later brother and on 6/10/2021 at 9.30 p.m he was in the house at Mlolongo – Machakos studying and he heard his brother knock when he came from work but did not respond. He asked who had put the sack of rubbish and no one responded. Clinton was outside the house but inside the plot. He then heard a loud noise “woi amenidunga kisu” I ran out and I saw “Mrefu”, (as they referred to him) the Accused had a torch and a knife and he asked



him “Mrefu kwa nini umefanya hivi?” He almost stabbed PW1 but he ducked and screamed to the neighbours for help who came to the scene.

6. His friend Michael and Auntie and the accused went to the house took a panga and came towards me but he screamed and ran away. Together with Michael, Mark and auntie they took Clinton to Immaculate Hospital but we were not successful, Athi River Level 4 Hospital but we were unsuccessful and went to Kitengela – Saitoti Hospital where they took Clinton inside casualty and were told to wait outside.
7. After a while the doctor called him and told me “Kevin your bother is no more”. They went to the police station and they arrested the Accused person. The accused washed the knife he used to stab the deceased my brother. He had locked himself in the house. For 2 months, the accused person and the deceased lived in the same plot – they did not have a problem except for this day.
8. Upon Cross-examination, he stated that he lived in House Number 16 in that plot in Lema with his brother for 2 months. He said he met saw and interacted with the accused. He said the accused’s house in the plot was No.10. He did not know the number but his house was near the gate and my brother’s house was near where rubbish was thrown and cloth lines. There were posters that this is where rubbish was thrown. He said the accused person had motor bike and it was kept in the plot near the stairs to go to the toilet. He said that his brother complained of rubbish being brought to his house and took it near the motor bike but he did not know if the agent sorted this matter. He said the Agent/Caretaker put posters that rubbish was to be thrown near the motor bike. The Agent, Tony, is the one who moved the posters. The deceased and accused had a problem over rubbish being thrown near the house for a long time.
9. On the day of the incident a sack of rubbish was placed at the door of our house. He was inside the house I do not know if and why the sack of rubbish was placed there and they did not take it to the motor bike. He said he was studying I did not hear or do anything. He did not see him the accused person take the rubbish to the other place. He heard the rubbish being thrown near our house. He was studying did not know how long it took to after my brother came and it was 15 minutes. He did not know if his brother came and attacked the accused person. He denied being the one who came out with a knife as they were struggling and mistakenly stabbed my brother.
10. He said that the plot did not have lights but there was light in the house. He said he was interrogated and put in the cell and later released. I am not aware and it is not true that me and my brother wanted to stab the accused with a knife. The people who came were Michael Mark and auntie. In his statement he said Mark and Auntie in my statement came to me. Michael came to help him take his brother to hospital. The accused came with a panga I ducked I ran and I called for help. Mark and Auntie came to the scene later, Michael came and helped me to take Clinton to the Hospital.
11. It was his testimony that the accused person chased him and told him he could also kill me while he went to collect a panga from the house. When they came with the police and “Mrefu” the accused was in the house and the knife was washed with water and there was blood with water at the door of the accused house. This part of the incident did not record in his statement that I saw blood and water outside the Accused person after he washed the knife
12. PW.2, Michael Munyao stated that at 9.30 p.m. he came from the plot and heard screams from Kevin PW.1 and he was hitting iron sheets screaming my brother my brother. He asked him what happened and he said that his brother was stabbed by “Mrefu”. The accused person. He saw “Mrefu” walking with a knife with blood and he said that the brother had stabbed his brother. He followed Pw1 and found his brother was on the road/ground and was trying to take him up. Brian came with a motor bike and took the deceased to hospital. They went to Immaculate Hospital and it was not agreed. They



- went to the 2nd Hospital and they did not help us. They then took him to Level 5 Saitoti Hospital. He said he carried the deceased to the 3 hospitals, he had injuries on the back and swollen on the face. When they reached at Kitengela Saitoti Hospital, the doctor held the victim's hand and the eyes and took the temperature and he said the deceased died. He said he lived in the next plot and knew Clinton very well and the accused person in the nearby plot – there is only story of the rubbish.
13. In Cross – examination, he said that he did not stay in the same estate with the accused and the deceased and only heard of the problem of rubbish the next day after the incident. He visited Kevin PW1 and saw where the rubbish was to be put near the toilet. He did not see or know about the rubbish. He was outside the plot of Pw1 and accused person and it was a short distance from the gate. He saw Kevin running and he said his brother was stabbed and he went to the main road. When the noise was being made I saw Clinton who ran away from the plot and later I saw Kevin (Pw1). He did not see anyone else.
 14. When he heard the noise he knew it was Kevin and he saw Clinton running away. He did not know why Clinton ran away and after that he heard 2nd scream and heard Kevin hitting the iron sheets and he was running down and the accused was behind him with a knife and he was standing. He said it was at night and there was a security light. The knife was shining. Clinton was hit on the shoulder and on the right side.
 15. PW.3 Ruth Okanya stated that on 6/10/2021 I can recall at 9 p.m. – 9.30 p.m. she was closing down her business when she heard the noise from iron sheets at the plot they live in. She went to the gate and heard someone crying and he said this man is beating me and that this man stabbed with a knife. She met with the victim, Clinton and he told her that “Mrefu” had stabbed him. She went ahead and found “Mrefu” had a knife and a torch in the other hand. She identified the knife and stated that it is the one the accused person had on that day. Mrefu is the one who is in Court today. She asked him why he stabbed him and he alleged it was 2 other boys who stabbed him.
 16. She contended that she went home and came back to close her business and when she came back she found Mrefu with a chasing Kevin with a panga now/at the time. Kevin screamed that Mrefu stabbed his brother, Mark came from the other plot and asked Kevin what happened and Mark and Mrefu and he said that it is the 2 who stabbed him. Mark insisted that Mrefu shows where he was stabbed and that did not happen and Mark left. Kevin and Mark went to look for Clinton and took him to hospital. All of us are neighbours Clinton, Kevin, Mark and me and Mrefu and we did not have any problems and there was no grudge/quarrel.
 17. Upon cross examination, she said that she lived at Lema for 3 years. My house is No.21. Clinton lived there at No. 16 and lived with Kevin. The accused lived at No. 10 near the gate of the plot. Kevin/Clinton lived near the cloth lines and where dirty was poured. The rubbish was thrown at near the toilet. The accused person had a motor bike which was packed near the stairs of the plot. Mrefu took the sack of rubbish to the Clinton/Kevin house. She was inside the house and did not see it.
 18. She said that where the rubbish was taken it is written usitupe takataka. I live near Clinton. We have lived 3 years and they called me Auntie though they are not related by blood. She said they do not have security lights and It is dark outside and at the gate. She said she has a kiosk where she sells maharagwe and choma mahindi outside the gate Lema One – Mama Tracy. She goes there at 12.00 noon and closes at 9.30 p.m. On the day of the instant day she heard the voice of Clinton from hearing it before she saw him and met him as she came in at the gate.
 19. Clinton did not fall outside the house. She had the pot and her child and could not help him. She went upto Mrefu at the corner as he came from Clinton/Kevin and he was alone. Mrefu had a torch/phone and the knife and she talked with him, Kevin was not there. She found Kevin going outside the gate and Mrefu was following him and he had the panga. He had it in his hand and he had a torch and he



- had a big torch with a bladder. Kevin ran out of the gate and Mrefu came out and Mark went to stop Mrefu. Mrefu told us that it is the minor Kevin/Clinton who stabbed him. He did not know show them the stab wound. Clinton was bleeding profusely and had blood on his clothes. Mrefu came back and returned the panga and left. When the police came she was there but I did not come out they found Mrefu. I heard him come back. She did not witness the fight or stab of Clinton.
20. PW.4, Evans Kivanre Ayumba stated that Clinton was his 1st son and on 6/10/2021 at 6 p.m he left him at work at Children Home Liberty opposite police station. He was a Barber and he gave me kshs.100/- and at 9 p.m. he found they had not come back. Clinton and Kevin lived in the plot and he heard people screaming and found that “Mrefu” – the accused person stabbed someone and it was during curfew. At that point they took him to Saitoti. When he came from work at 9 a.m. and he was told that Clinton died at 11 p.m. They did not allow him to leave work.
 21. The Caretaker called him 9 p.m. at work and after 20 minutes Kevin called me and said Clinton was a in a bad state. That was at 9.50 p.m. I got means to go to Kevin and we met at Kitengela and they were told to report at Mlolongo police station. They did went to the plot. He said he knew Mrefu well as he lived where my children lived and had a motor bike and they did not have any problem.
 22. Upon Cross – examination she paid rent for the 2 sons Kevin and Clinton; Kevin was in Form IV. He said he did not witness any incident. He went with police officers and they identified the body of his son. The stab wound was on the front to back at the heart. When they went to record statement his son Kevin was arrested and later released after 30 minutes. He did not go with the police officers to the scene at which time the suspect was at the police station. She said she knew Ruth Okanyi as a neighbour whom they respected but they are not related.
 23. PW.5 DR. P.M. Ndegwa testified virtually and stated that on 8/10/2021 he performed a post mortem of Clinton Kivatse in the presence of Harris Silingi and Kevin Musira both brothers to Clinton and Cpl. John Mwiti DCI Mlolongo. The body was of make adult aged 23 years moderately built – 177 cm tall. It was his testimony that externally, the body was dehydrated and pale and bandaged wound on the left scapula chest 4x2 cm and blood was oozing from the penetrating stab wound easily. Perforated left lung through and through and the pericardium (sac that surrounds the heart) was perforate and left side haemorrhage (blood & bleeding) 2 litres. He concluded that the cause of death was exsanguination (bleeding) due to severe chest injuries due to penetrating sharp force trauma consistent with assault. He filled in the post mortem Report at Saitoti Kitengela Hospital and dated it 8/10/2021 the same day.
 24. PW6 Harris Silingi stated that Clinton Kivatse was my brother – late brother. He stated that on 8/10/2021 he went to the hospital, he identified the body of his late brother and post mortem was conducted by the doctor and he said that the deceased died from the stab wound.
 25. Upon Cross – examination he said that he saw the injuries on his late brother at the back left side.
 26. PW. 7 - CPL. Mwiti John testified virtually and stated that in 2021 he was in Mlolongo OCI and on 6/10/2021 he was on duty with other officers on 24 hours Patrol/duty and a report was made of murder occurrence. The Reportee said they took him to hospital in Kitengela and he succumbed to his death. We proceeded to Kitengela Hospital with Reportee took us to the Hospital and to the scene. Clinton Kivatse Ayumba succumbed to his death. The Reportee led us to lemma estate Mlolongo Phase 2 and on arrival the gate was closed. They knocked severally at the gate and one Mark came opened the gate for them and Kevin Musira led them to the house of one Stanley Mwangi Macharia as he identified him as Macharia Mrefu.
 27. He contended that they interrogated the suspect who was fully dressed upon our arrival. They conducted a search and recovered a knife/kitchen knife which was positively identified by Pw1 Kevin



- Musial Ayumba, the brother of deceased , Pw2 – Mark Wafula Lumbasi of Room 17 and PW.3- Ruth Okanyi who sells food at the estate
28. He testified that after recovery of the kitchen knife they took him to Mlolongo police station and booked him. The next day he filed a Misc. at Mavoko Law courts to get orders to detain the suspect at Mlolongo police station. He recorded statements from witnesses and arraigned him in court. He identified and produced the knife that they recovered from the accused person's house.
 29. In Cross – examination he said that he was the investigating officer in this matter and knew the gravity of charges against the accused person. He contends that through investigations were to be made before charging the accused person. He said that a report was made on 6/10/2021 by Kevin Musira (PW.1) and that during investigations he discovered the accused person and the deceased lived in the same estate. The deceased was in House 16 and the Accused in House No.10. In the estate there was a dumping site for waste and it was not near the deceased house. The dumping site was at the place the accused placed the motor bike.
 30. PW7 said that he recorded witness statements and the witness Mark Wafula and all witnesses who came to Court. He did not know what transpired. He interviewed them and they did not tell him that dumping was at the deceased house. He said that the deceased lived with his brother in the same house. During investigations he did not come across the fact that the accused person complained that dumping site to be marked properly. He got information from the witnesses that there was a problem. He said he did not see posters of dumping site. He went to the deceased's house, the disputed position of the dumping site.
 31. It was his contention that led to the deceased's death was alleged dispute of the dumping site between the deceased and accused person. He was not aware that the accused person removed the trash and the deceased and his brother came out with a knife. It was contended that when Pw.1 tried to stab the accused person he tilted and he stabbed his own brother. I did not hear or know of the missed target. He was not aware the accused person came to report at the police station as 1st Reportee as victim in OB 78.
 32. PW7 denied relying on what I was told by deceased's brother and Pw4 to press the charges. He was not aware that Pw.1, Pw3 and Pw.4 were relatives. He went to the accused person's house and recovered a knife which he suspected was the murder weapon; from the description given by the witnesses. He said he did not do an inventory and Kevin Musira saw him recover the knife at the accused persons house. He denied being given the knife by Kevin Musira.
 33. It was his testimony that the incident took place at 9 p.m. and tenants were in the houses other than the witnesses I got an independent witness Mark Wafula was inside the estate. He said he found the accused person had cleared the scene, from my investigations the incident took place outside the house at the verandah. Mark Wafula saw the accused clear up the scene and recorded a statement. Pw7 did not contact the management of the estate. PW7 denied knowledge of a grudge between the deceased and his brother against the accused person because of the complaint the accused person made to management.

Finding

34. The matter commenced hearing on 22/3/2022 with the prosecution calling PW1 and PW2, PW3 and PW4 were called on 31/5/2022, PW5 and PW6 were called on 28/7/2022. PW7 gave his testimony on 23/2/2024 and the prosecution closed its case.
35. Parties/Counsel were to file Written Submissions.
36. At the Close of the Prosecution case, this Court read through the Court record and documentary exhibits produced during trial and considered the totality of the evidence.



37. In the case of *Anthony Njue Njeru vs Republic* Court of Appeal No 77 of 2006; the Court determined the scope and content of case or no case to answer Ruling by the Court as follows;

[Is] Was there a prima facie case to warrant the Trial Court to call upon the appellant to defend himself? It is a cardinal principle of our law that the onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if, at the close of prosecution the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction”.

38. The issue of what is a prima facie case in criminal trials was clearly explained in *Ramanlal Trambaklal Bhatt V R* [1957] E.A. 332 at p. 334-335 where it was said:-

“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 true, as Wilson, J., said, that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. 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.”

39. In the instant case, on record the evidence recorded is that on 6/10/2021 Pw1 found heard his brother crying saying he had been stabbed. The accused was seen at the scene with a knife that had blood and he tried to stab PW1 but that did not happen. He went into his house for a panga and started chasing PW1.
40. PW2 , a neighbor heard PW1 hitting the iron sheets and screaming “my brother, my brother” the deceased was on the road/ground and PW1 was trying to take him up. He saw “Mrefu” walking with a knife with blood and he said that the brother had stabbed his brother.
41. PW 3’s heard the deceased cry as she was closing down her business, she went to the scene and the deceased told her that the accused was beating him and had stabbed him with a knife. She saw the accused person holding a knife on one hand and a torch on the other hand and identified the knife in court.
42. Pw4 and pw6 identified the accused persons body at the hospital. PW4’s evidence was that the stab wound was on the front to back at the heart and PW6 said the stab was at the back.



43. Pw5 conducted the post mortem on the deceased's body and concluded that the cause of death was exsanguination (bleeding) due to severe chest injuries due to penetrating sharp force trauma consistent with assault.
44. PW7 was the investigating officer whose evidence was that the accused person stabbed the deceased with a knife which he produced.

Disposition

- (1) Upon this Court's consideration of the totality of the evidence adduced and on record, the Prosecution has proved a prima facie case ".....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."
- (2) The evidence of witness Pw5 & PW7 coupled with the formal witnesses Pw1, Pw2, PW3 & Pw4 confirm that the deceased died from an unlawful act and places the Accused person at the scene and time of incident and the circumstances outlined target the Accused person. The evidence on record discloses commission of the criminal offence of murder c/s 203 of the Penal Code and is sufficient to warrant the Accused person to be placed on her defense.
- (3) The law requires that the Accused exercises the legal right as prescribed under Sections 306 [CPC](#).

RULING DELIVERED DATED & SIGNED IN OPEN COURT ON 31/5/2024 IN MACHAKOS HIGH COURT (VIRTUALLY/PHYSICALLY).

M.W.MUIGAI

JUDGE

COURT: FMD ON 2/7/2024

Accused person to be served with copy of proceedings through dr/mhc to prepare for defence.

