



**Republic v Ochung (Criminal Case E006 of 2022)
[2024] KEHC 10240 (KLR) (19 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10240 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E006 OF 2022
RE ABURILI, J
AUGUST 19, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SYLVESTER AKELLO OCHUNG ACCUSED

RULING

1. The accused person in this case is Sylvester Akello Ochung. He is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. This is according to the information dated 15/3/2022. Particulars of the charge are that on the 28th Day of February 2022, at Kadero sublocation, Seme Subcounty within Kisumu County, the accused person murdered Palmer Kimathi Omondi.
3. The accused person was mentally examined and found to be fit to plead and stand trial, pleaded not Guilty to the charge of murder on 29th March, 2022 before Hon Justice F. A. Ochieng (as he was then).
4. The hearing commenced on 31/1/2024. The prosecution called 10 witnesses who testified and closed its case on 20th June, 2024. No submissions on whether the accused person has a case to answer were filed by his counsel or the prosecution.
5. My duty at this stage, therefore is to determine whether the prosecution has established a prima facie case against the accused person to warrant him to be placed on his 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, considering that under Article 50 (2) (i) and (l) of the [Constitution](#), an accused person has the right to remain silent and not testify in his trial and even if he so testifies thereby exercising his right to adduce and challenge evidence of the prosecution, his right not to give self-incriminating evidence is guaranteed.



7. In *R vs Abdi Ibrahim Owi* [2013] eKLR, the court defined what a prima facie case is and in short, a prima facie case, means that a rebuttable presumption that an accused person is guilty of the offence charged.
8. However, the legal onus to prove its case beyond reasonable doubt always lie on the prosecution throughout the trial. (See *Ramanlal Trambaklal Bhatt vs Republic* [1957] EA332 @335.
9. In *Festo Wandera Mukando vs R* [1980] KLR13, the court nonetheless warned against giving detailed reasons for holding that an accused has a case to answer as this could prove embarrassing to the court and in extreme cases, the Appellate court may set aside an otherwise sound judgment. The court stated inter alia:

“...where a submission of no case to answer is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then, that is the end of the case or the count or counts concerned.”
10. Section 306(1) of the *Criminal Procedure Code* stipulates that:

“When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of the several accused committed the offence shall, after hearing, if necessary any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not Guilty.”
11. In this case, and without delving deep into the evidence adduced, having considered the evidence adduced by all the 10 prosecution witnesses, I am satisfied that the prosecution has established a prima facie case against the accused person herein to warrant him to be placed on his defence.
12. Accordingly, the accused person herein Sylvester Akello Ochung is found to have a case to answer for the alleged murder of Palmer Kimathi Omondi and he is hereby placed on his defence.
13. The provisions of Section 306(2) of the *Criminal Procedure Code* as read with Articles 50(2) (i) (k) and (l) of the *Constitution* are hereby read out to the accused person in Dholuo language which he understands in the presence of his advocate and he is advised to consult his advocate on the mode of defence to proffer.
14. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 19TH DAY OF AUGUST, 2024

R. E. ABURILI

JUDGE

