



**Republic v Sheikh & another (Criminal Case 5 of 2020)
[2024] KEHC 11117 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11117 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE 5 OF 2020
JN ONYIEGO, J
SEPTEMBER 25, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAHAL ALI SHEIKH 1ST ACCUSED

IBRAHIM AHMED DAGANE 2ND ACCUSED

RULING

1. The accused persons herein face a charge of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on 28.03.2020, at around 1945hrs, at Dertu – Borosis road junction Daadab Sub County within Garisa County, unlawfully murdered Dekow Diese Hirsi.
2. They were arraigned in court on 23rd April 2020 and upon the charges being read to them, they pleaded not guilty hence a plea of not guilty entered.
3. The matter proceeded to hearing consequences whereof the prosecution called a total of ten (10) witnesses in order to prove its case.
4. By virtue of section 306 of *Criminal Procedure Code*, this court has a legal duty, upon close of the prosecution’s case, to make a ruling or a decision on whether an accused person has a case to answer or not. Under Section 306(1), when the evidence of the witnesses for the prosecution has been concluded, and the court is of the opinion that there is no evidence that the accused or any one or more of several accused persons 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.
5. Section 306(2) further provides that; when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is evidence that the accused person or any one or



more of several accused persons committed the offence, the court shall proceed to put the accused to his/ their defence and in such a circumstance, the accused is supposed to present evidence in defence.

6. As such, at this stage, this court's role is to consider the evidence on record and make a determination as to whether the same presents a prima facie case that would warrant this court to call upon the accused to give his defence. In the case of *Ronald Nyaga Kiura vs Republic* [2018] eKLR, the court stated as follows (in relation to a prima facie case); -

“It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the Criminal Procedure Code.

A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person.

7. However, it is trite that, where the court is not acquitting the accused person at the close of prosecutions' case, there is no need for a reasoned ruling for a case to answer. Reasons should only be given where the submissions of a no case to answer by the accused are upheld and the accused is to be acquitted. [See *R vs Kevin Owuoth Abith alias Opudo* [2022] eKLR].
8. I have considered the evidence tendered by the prosecution in support of its case. From the entirety of the said evidence in particular pw1 and pw2, it is my view that the prosecution has made up a prima facie case against the accused persons which requires them to be placed on their defence so as to rebut the same. The accused persons therefore have a case to answer and are hereby placed on their defence.
9. Accordingly, accused persons are at liberty to give sworn testimony in which case they will be subjected to cross examination. Alternatively, they can give sworn testimony whereby they will not be subjected to cross examination. Lastly, they can opt to keep quiet. In either case, they shall be at liberty to call witnesses.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 25TH DAY OF SEPTEMBER 2024

J. N. ONYIEGO

JUDGE

