



**Republic v Osman (Criminal Case E010 of 2022)  
[2024] KEHC 13272 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13272 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E010 OF 2022  
JN ONYIEGO, J  
OCTOBER 30, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SADIA AHMED OSMAN ..... ACCUSED**

**RULING**

1. The accused person herein was initially charged with two others with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence are that on 17.04.2022 at Bula Kajibo Estate, Madogo Division, Bangale Sub County within Tana River County they jointly and unlawfully murdered one John Sammy Kyalo. Later on, the other two were discharged and the matter proceeded against the accused herein.
2. The accused pleaded not guilty to the charge and the prosecution closed its case after calling six witnesses in support of the charge.
3. This court is now called upon to determine whether the prosecution has established a prima facie case against the accused person to warrant her being placed on her defence.
4. The burden of proof lies with the prosecution throughout the trial to prove their case against the accused person and that burden does not shift to the accused person except in a few cases as provided for by law.
5. A *prima facie* case, it has been held severally by courts, is not one that must necessarily succeed. A prima facie case was defined in *Republic v Abdi Ibrahim Owl* [2013] eKLR as: “Prima facie” is a Latin word defined by *Black’s Law Dictionary*, 8<sup>th</sup> Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”.



6. The same Black's Law Dictionary defines "prima facie case" as "The establishment of a legally required rebuttable presumption."

7. In *Ramanlal Trambaklal Bhatt v R* [1957] EA 332 at 334 and 335, the court expressed itself 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, 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 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."

[ Also see the case of *Anthony Njue Njeru v Republic* [2006] eKLR].

8. The question that this court has to deal with and answer at this stage is therefore, whether based on the evidence before this Court, the Court after properly directing its mind to the law and the evidence may, as opposed to, will convict if the accused chose to give no evidence. In *Ronald Nyaga Kiura v Republic* [2018] eKLR the Court stated that:

"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 her on her defence pursuant to the provisions of Section 211 of the Criminal Procedure Code..."

9. There is indeed a danger in making definitive findings at this stage, especially where the Court finds that there is a case to answer and therefore the reasons for not delving deep into the merits of the case are apparent. It was appreciated by Trevelyan and Chesoni, JJ in *Festo Wandera Mukando v The Republic* [1980] KLR 103 that:

"...we once more draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgement. Where a submission of "no case" 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 to the case or the count or counts concerned."

10. I have considered the evidence adduced by the six prosecution witnesses against the accused person and the exhibits produced. Briefly, from the evidence, it was stated that there were two scenes of crime. The first scene was a distance from the 'Word of God Ministries', where the deceased was assaulted by the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons who have since been discharged. At the second scene, it was averred that the accused herein aggressively hit the deceased with a heavy plastic pipe reinforced with a metallic handle.



11. From the above evidence of PW1 and other circumstantial evidence on record, I am persuaded that a *prima facie* case has been established against the accused person to warrant her to be placed on her defence.
12. Accordingly, the accused person herein is hereby found to have a case to answer and is placed on her defence for the alleged murder of the deceased. Pursuant to Section 211 of the [CPC](#), the accused has three options. Firstly, he can make a sworn statement in which he will be subjected to cross examination. Secondly, he can make unsworn testimony in which case he will not be cross-examined and lastly, he can opt to keep quiet. In either option, he can call witnesses if he wishes.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF OCTOBER 2024**

**J. N. ONYIEGO**

**JUDGE**

