



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kadima alias Erick Kambaye Katalayi (Criminal Case
E002 of 2021) [2024] KEHC 13465 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13465 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL CASE E002 OF 2021**

FR OLEL, J

OCTOBER 29, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

**CHRISTIAN BALEDI KADIMA ALIAS ERICK KAMBAYE
KATALAYI ACCUSED**

RULING

1. The accused, Christian Baledi Kadima Alias Erick Kambaye Katalayi, is charged with the offence of murder contrary to section 203 as read section 204 of the *Penal Code*. It is alleged that on the 7th of January 2021, at Syokimau Ferndale court in Athi River, sub-county within Machakos County murdered Elizabeth Koki Musyoki.
2. The issue before me at this stage is whether the evidence so far adduced warrants calling upon the accused to defend himself. In other words, does the accused have a case to answer? In *Republic v. Abdi Ibrahim Owl* [2013] eKLR a *prima facie* case was defined as follows:

“*Prima facie*” is a Latin word defined by *Black’s Law Dictionary*, 8th Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “*Prima facie* case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with.
3. In Ramanlal Trambaklal *Bhatt v. R* [1957] E.A 332 at 334 and 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, 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 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.”

4. The question that this court has to deal with and answer at this stage is therefore, is 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. It was therefore held in [Ronald Nyaga Kiura v. Republic](#) [2018] eKLR wherein paragraph 22 it is stated as follows:

“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 *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.

5. I have considered the evidence so far adduced from the prosecution’s side which confirmed that the accused had a romantic relationship with the deceased, the pathologist Dr Johansen Odour, confirmed that the deceased died due to Asphyxia and the evidence of PW1 Grace Ndanu placed the accused at the scene of the crime as the last person seen with the deceased in her bedroom before she was found dead the following morning. I am satisfied that the prosecution has established a *prima facie* case to find that the accused has a case to answer. As to whether the said evidence on record meets the threshold for convicting the accused is a matter that will have to be considered at the end of the trial.
6. I accordingly place the accused on his defence.
7. It is so ordered.

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 29TH DAY OF OCTOBER 2024.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 29TH DAY OF OCTOBER, 2024.

In the presence of: -

Accused present in court

Ms Otulo for ODPP

Shirleen/Kanja Court Assistant

Mr. Langalanga for accused present

Mr. Mugishi for family present

Ms Juma for Fida (K) present

