



REPUBLIC OF KENYA



**Republic v Mustafa alias Mzae (Criminal Case E014 of 2021)
[2024] KEHC 13192 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13192 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E014 OF 2021
RE ABURILI, J
OCTOBER 29, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

MZHAMIN NOOR MUSTAFA ALIAS MZAE ACCUSED

RULING

1. The accused person Mzhamin Noor Mustafa alias Mzae is charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. Particulars of the offence as per the Information dated 29th day of April 2021 are that on the 21st day of March 2021 at PlainLand Hotel, Kondele area in Kisumu Central Sub-county within Kisumu County, the accused person murdered Kennedy Onyango Ndeda.
3. The accused took plea on 15th May 2021 and denied committing the offence. He was granted bond of Kshs.250,000 plus two sureties of similar amount and on 20th May 2021, he was released on bond pending trial.
4. The prosecution has called a total of 10 witnesses who have testified and now the duty of this court is to determine, based on the evidence adduced, whether the prosecution has made out a prima facie case against the accused person to warrant him to be placed on his defence.
5. The burden of proof lies on the prosecution throughout the trial to establish the guilt of the accused person and the standard of proof is beyond reasonable doubt.
6. However, at this stage, the court cannot rule on whether the prosecution has proved its case against the accused person beyond reasonable doubt.
7. All that is required is a *prima facie* case established against the accused.



8. The accused person is presumed innocent until proven guilty. Further, even if he is placed on his defence, he is not obliged to testify as his right to remain silent and not to give self-incriminating evidence is constitutionally guaranteed and cannot be limited.
9. What that implies is that even if an accused is found with a case to answer, that does not mean that he is guilty of the offence charged.
10. On the other hand, should the court be of the view that a prima facie case has been established, it should not give a detailed analysis of the evidence justifying the prima facie case as that might prejudice the accused.
11. In this case, and without delving deep into the evidence adduced by the 10 prosecution witnesses, I am satisfied that a prima facie case is established against the accused person herein Mzhamin Noor Mustafa alias Mzae who is hereby found to have a case to answer and is hereby placed on his defence.
12. Section 306(2) of the *Criminal Procedure Code* as read with Article 50(2) (i) (k) (l) of the *Constitution* are hereby read out to the accused person and explained to him in the presence of his counsel Mr. Onsongo.
13. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 29TH DAY OF OCTOBER, 2024

R. E. ABURILI

JUDGE

