



**Republic v Malim & another (Criminal Case E009 of 2021)
[2024] KEHC 14605 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14605 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E009 OF 2021
JN ONYIEGO, J
NOVEMBER 22, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

MAHAMUD MALIM 1ST ACCUSED

ABDIRIZAK IDRIS 2ND ACCUSED

RULING

1. Accused persons herein are charged with the offence of murder contrary to 203 as read out with section 204 of the [penal code](#). Particulars are that on 21st day of November 2021, at around 2030hrs at Adhele area, Madogo Location, within Tana River County, they jointly murdered Sammy Muli.
2. The matter proceeded to full hearing wherein the prosecution called a total of eight (8) witnesses in order to prove its case. At the close of the prosecution case, both counsel opted not to submit and instead urged the court to deliver its ruling based on the evidence tendered by the prosecution.
3. It is trite that in a criminal trial, once the prosecution closes its case, the court is call upon to make a finding whether the evidence tendered meets the threshold of a prima facie case to enable the court put accused on his defence. 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.
4. Section 306 (1) of the [Criminal Procedure Code](#) does provide as follows:

“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.”

5. Having considered the testimonies of the prosecution witnesses, the question that begs for an answer at this stage is whether the evidence tendered herein establishes a prima facie case against the accused or better still, whether the accused has a case to answer.
6. In *Republic v Abdi Ibrahim Ows* [2013] eKLR, the court defined a prima facie case as follows:

“Prima facie’ is a latin word defined by Black’s Law Dictionary 8th Edition as, “sufficient to establish a fact or raise presumption unless disapproved or rebutted”. ‘Prima facie’ is defined by the same dictionary as “the establishment of a legally required rebuttable presumption.”

[Also see *Ramanlal Trambaklal Bhatt v R* [1957] EA 332].
7. From the above, can this court on the basis of the evidence so far tendered by the prosecution properly directing itself to the law and evidence convict if the accused chooses not to give any evidence?
8. In the case of *Ronald Nyaga Kiura v Republic* [2018] eKLR, the court held:

“It is important to note that at the close of the Prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie case 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...”
9. The trial court is however cautioned that at this stage, it should not make definitive findings should it conclude that the accused has a case to answer.
10. In *Festo Wandera Mukando v Republic* [1980] KLR 103, the court held thus:

“...we 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 judgment. 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 to the case or the court or counts concerned.”
11. Without delving into the depths of the witnesses’ testimonies, I am satisfied that the Prosecution through the testimony of pw1, pw2, pw6, pw7 and pw8 and the available circumstantial evidence have established a prima facie case against the accused persons to warrant them to be placed on their defence. I therefore find that the accused herein have a case to answer and are therefore placed on their defence.
12. Accordingly, section 211 of the *CPC* shall be complied with to the extent that; accused shall be at liberty to give sworn testimony in which case they will be subjected to cross examination by the prosecution; Alternatively, they can opt to give unsworn testimony to which they will not be subjected to cross examination. Third option, they can choose to keep quiet. In either option, they shall be at liberty to call witnesses.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 22ND DAY OF NOVEMBER 2024.

J. N. ONYIEGO

JUDGE

