



REPUBLIC OF KENYA



KENYA LAW
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**Eyanae v Republic (Criminal Case E001 of 2022)
[2023] KEHC 25925 (KLR) (29 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25925 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL CASE E001 OF 2022
RN NYAKUNDI, J
NOVEMBER 29, 2023**

BETWEEN

DANIEL EYANAE ALIAS DANNY APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The accused person is standing trial for the offence of murder contrary to section 203 as read with 204 of the [Penal Code](#). The charge reads that Daniel Eyanae alias Dany on the 22nd day of March, 2021 at Ng'abakan village, Katilu ward, Turkana south sub-county within Turkana County murdered Ruth Esekon. The accused person pleaded not guilty to the offence. In the effort to prove the guilty of the accused person as stipulated in article 50 (2) (a) of the [Constitution](#), the prosecution summoned six witnesses to establish the following ingredients of the offence.
 - a. The death of the deceased
 - b. That her death was unlawfully caused
 - c. In causing death of the deceased the accused was actuated with malice aforethought under section 206 of the [Penal Code](#).
 - d. That the evidence on the basis of the charge places the accused person positively at the scene of the crime.
2. The position on this issue is that at the end of the prosecution case, it is the duty which is vested with the prosecution to establish a *prima facie* case which warrant the defence to be called upon to answer. In the event that the defence has no evidence to offer or elects to exercise rights of silence to rebut the evidence produced by the prosecution then inevitably conviction will follow against the accused.



3. It affords this court an opportunity to lay down a purpose and guiding principles which the court is required to review the evidence by the prosecution as to the existence of proof of facts relating to the determination as to whether the accused person has a case with a justifiable inference with a greater potential to hold him culpable for the charge in question. At this stage it might be necessary to test the conflicting views taken by the witnesses to determine the motion of a no case to answer. The prosecution case must also satisfy the independent tribunal that the case so being tried against the accused discloses sufficient evidence that he committed the offence charged to call upon him to answer or deliver his defence.
4. The true significance of a prima facie case or a no case to answer is as clearly pronounced by Lord Lane CJ in *R v Galbraith* [1981] 1 WLR 1039 in the following statement.

How then should the judge approach a submission of ‘no case’?

- (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The Judge will of course stop the case.
 - (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.
 - (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.
 - (b) where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’s reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.
5. In addition the following practice direction (submission of No case) [1962] 1 ALL ER 448, [1962] 1 WLR 227 reiterated that a submission that there is no case to answer may properly be made and upheld:
 - (a) when there has been no evidence to prove an essential element in the alleged offence;
 - (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict upon it.

Apart from these two situations a tribunal should not in general be called upon to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it. If however a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer.



6. In this particular purpose there is no uncertainty that the deceased is dead. There is also a *prima facie* evidence by the prosecution including that of the pathologist that seems to be quite reasonable that her death was as a result of unlawful acts of assault or grievous harm that was applied in violation of the law. It is also obvious from the foregoing the evidence put forward by the prosecution strengthens some kind of culpability by the acts of omission of a third party engaging in the infliction of fatal injuries. The common device in such a case is not to shift the burden of proof to the accused person but to fundamentally give him an opportunity to make a defence for this court to have a whole case in place to be decided by it after weighing all the evidence on record.
7. The test of rational connection in testing *prima facie* proof was first enunciated in the Turnipseed case as follows:

“That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of equal protection of the law, it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. So, also, it must not, under guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defence to the main fact presumed [J & K.C.R.R v. *Turnipseed*, 219 U.S 35(1910)

8. In a searching analysis of the evidence by the prosecution there is ample justification to hold existence of a *prima facie* case to have the accused person be placed on his defence within the provisions of section 306 (2) as read with section 307 of the [Criminal Procedure Code](#). It is for the accused to repel what has been stated or proved by the prosecution, but more importantly is to satisfy the criteria on fair trial rights as stressed in article 50 of the constitution. The action on the case is as originally based upon the doing of an unlawful act by a known person before this court. The nub of this approach is found in the distinction between the consequences of one’s action which the law, as a matter of law, will hold one to have foreseen, and the consequences which one personally knows will actually flow from his action and deliberately, i.e., intentionally and wilfully, so acts to produce.
9. In short it is now the turn of the accused to state his defence on the nature of the act and whether it occurred within the ambit of section 203 of the [Penal Code](#).

It is so ordered.

DATED, SIGNED AND DELIVERED AT LODWAR THIS 29TH DAY OF NOVEMBER, 2023.

R NYAKUNDI

JUDGE

In the presence of:

Mr. Kakoi for the state

Accused in person

