



**Republic v Shimole (Criminal Case E010 of 2021)
[2023] KEHC 27387 (KLR) (29 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27387 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E010 OF 2021
JN ONYIEGO, J
DECEMBER 29, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

MOHAMED HAMISI SHIMOLE ACCUSED

RULING

1. The accused person herein was charged 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 04.12.2021 at Balambala Location, Balambala Sub – County within Garissa County murdered Idriss Salim Hama. Upon arraignment in court, he pleaded not guilty and a plea of not guilty was entered accordingly.
2. Subsequently, the case proceeded to full trial with the prosecution calling Five (5) witnesses in support of its case. Upon close of its case, this court is call upon to make a finding as to whether the prosecution has established a prima facie case to warrant accused being put on his defence.
3. Under section 306 of the Criminal Procedure Code Cap 75 Laws of Kenya, this court has a duty, upon close of the prosecution’s case, to make a ruling or a decision on whether an accused person has a case to answer or not. Section 306(1) of the CPC provides that, when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is no evidence that the accused person committed the offence should, record a finding of not guilty.
4. On the other hand, Section 306(2) of the CPC provides that, when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is evidence that the accused person committed the offence, the court should proceed to put the accused on his defence.
5. Therefore, at this stage, this court’s role is to consider the evidence on record including submissions if any and make a determination as to whether the same presents a prima facie case that would warrant this court to call upon the accused person to give his defence.



6. Under 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. [See *Ramanlal Trambaklal Bhatt v R* [1957] EA 332 at 334 and 335].
7. However, it is trite that, where the court is not acquitting the accused person at the close of the prosecution's case, there is no need for a reasoned ruling for a case to answer. Reasons should only be given where the submission of a no case to answer by the accused is upheld and the accused is to be acquitted. [See *Festo Wandera Mukando v Republic* [1980] KLR 103].
8. I have considered the evidence tendered by the prosecution in this matter as required of this court and from the entirety of the said evidence, it is my view that the prosecution has made a prima facie case against the accused person. To that extent, he has a case to answer consequences whereof he is put on his defence.
9. Accordingly, the accused has a right to elect whether to give sworn testimony in which case he will be subjected to cross examination by the prosecution. Secondly, he can elect to give unsworn testimony in which case he will not be subjected to cross examination. Lastly, he can elect to keep quiet. In either choice, he shall be at liberty to call witnesses.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF DECEMBER 2023.

J.N. ONYIEGO

JUDGE

