



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Keinan (Criminal Case E003 of 2024)  
[2025] KEHC 1380 (KLR) (19 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1380 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E003 OF 2024  
JN ONYIEGO, J  
FEBRUARY 19, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ABDI HASSAN KEINAN ..... ACCUSED**

**RULING**

1. The accused person is 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 12.05.2024, at Eltutu area, Hirimani Ward, Tana North Sub – County within Tana River County, he murdered one Mohammud Mohamed Adhan.
2. Having pleaded not guilty to the charges, prosecution called a total of nine (9) witnesses in its endeavor to prove its case. At the close of the prosecutions’ case, both counsel did not submit on whether the accused has a case to answer or not.
3. At this stage of the proceedings, the court is expected to make a finding as to whether a prima facie case has been established to warrant accused being put on his defence or not. In Republic vs 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, 8<sup>th</sup> 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”.
4. To sustain a conviction on a charge of murder, the prosecution is under both legal and evidential obligation to prove certain ingredients of the offence. The case of Anthony Ndegwa Ngari vs Republic (2014) eKLR, listed the elements of the offence of murder as follows: -(a) the death of the deceased



- occurred; (b) that the accused committed the unlawful act which caused the death of the deceased; and (c) that the accused had malice aforethought.
5. At this stage, the court is not concerned with the test of proof beyond reasonable doubt, but whether there exists some prima facie evidence capable of calling the accused to state his defence.
6. The *Criminal Procedure Code* under Section 306 provides as follows:
- “(1) 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 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.
- (2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate(if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether he intends to call any witness as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.”
7. Equally, in the case of Republic vs Robert Zippora Nzilu (2020) eKLR, Odunga J. held that:
- “That there is a danger in making definitive findings at this stage, especially where the Court finds that there is a case to answer is not farfetched and the reasons for not doing so are obvious”.
8. I have considered the evidence adduced by the nine prosecution witnesses against the accused person and the exhibits produced thereof. From the foregoing, I am persuaded that a prima facie case has been established against the accused person.
9. In view of the above holding, it is my finding that the prosecution has established a prima facie case to warrant accused being put on his defence. To that extent, accused herein has a case to answer. He will therefore make either sworn testimony in which case he will be subjected to cross examination or unsworn testimony in which he will not be cross examined. He will as well opt to keep quiet. In either case he shall be free to call witnesses.

**DATED, SIGNED AND DELIVERED THIS 19<sup>TH</sup> DAY OF FEBRUARY 2025.**

**J. N. ONYIEGO**  
**JUDGE**

