



**Republic v Kosgei (Criminal Case 44 of 2018)
[2025] KEHC 1356 (KLR) (10 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1356 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 44 OF 2018
SM MOHOCHI, J
FEBRUARY 10, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSHUA KOSGEI ACCUSED

RULING

1. The accused Joshua Kosgei was on the 18th September 2018 arraigned before this court and charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars are that on the 26th day of September, 2018 at the lane off Moses Mudavadi road, opposite Regional Police Headquarters in Nakuru within Nakuru County, murdered David Sewe.
2. The accused person pleaded not guilty to the offence preferred against him. The prosecution presented fifteen (15) Witnesses and ten (10) exhibits constituting Exhibits 1,2a,2b,2c1, 2c2,2c3,2c4, 2d, 2e, and 3 in support of its case.
3. In this case the court recalls that at the time of commission of the alleged offence, the Accused was a police officer on duty, designated as a driver attached to the Nakuru Regional Commander's Office and the deceased victim was a suspected narcotic drug suspect under arrest and he died of gunshot injuries whilst in the custody of the accused having been arrested a few hours earlier.
4. When a Court with regard to the material placed before it, finds that the accused person should be put on their defence the Court ideally would not give a detailed ruling as the same can be addressed in the final decision. On the other hand, if the Court was of the considered view that an accused person has no case to answer, it would be imperative to give detailed reasons.
5. Section 306 of the *Criminal Procedure Code* calls upon this Court to make a Ruling on whether the prosecution had established a prima facie on case to answer warranting the accused person to be put on his defence or otherwise.



6. At this stage of the proceedings what the Court is required to do is to establish whether a prima facie case has been established and not proof beyond reasonable doubt. A prima facie case was defined in *Republic v Abdi Ibrahim Owl* [2013] KEHC2122 (KLR) as follows: _

“Prima facie” is a Latin word defined by *Black’s Law Dictionary*, 8th 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”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with. In *Ramanlal Trambaklal Bhatt v. R* [1957] E.A 332 at 334 and 335, the court stated as follows:

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction.” This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence”. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence..... It is may not be easy to define what is meant by a “prima facie case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”

7. A prima facie case therefore is essentially not made out of proof beyond reasonable doubt, but on rebuttable presumption that the accused person is guilty of the offence he is being accused of committing.
8. I have considered the evidence adduced by the prosecution in totality, the deceased was in custody of the accused, he died of a single gunshot, the accused was at the material time a police officer and the suspect was expected to be booked in a police station for appropriate charges before his unfortunate demise.
9. By the material evidence placed before Court by the prosecution sufficiently and satisfactorily establishes a “prima facie” case and I need say no more.
10. The upshot of the foregoing is that the prosecution has met the test of a prima facie case to warrant the accused person being placed to his defence to be called upon to answer. The accused is hereby found with a case to answer and is thus accordingly placed to his defense.

It is so ordered.

DATED SIGNED AND DELIVERED ON THIS 10RD DAY OF FEBRUARY 2025

.....

MOHOCHI S.M

JUDGE

Quorum



Mr. D. Mongeri- Advocate for the accused

Mr Kamonjo Kiburi-Advocate for the family of the victim

Mrs W. Mwarura -Prosecuting Counsel for the State0000

