



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Ochieng (Criminal Case E055 of 2021)
[2025] KEHC 3591 (KLR) (24 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3591 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E055 OF 2021
SM MOHOCHI, J
MARCH 24, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

BRIAN OTIENO OCHIENG ACCUSED

RULING

1. The accused was charged with the offence of murder contrary to Section 203 as read with 204 of the Penal Code. The particulars of the offence are that on the 7th day of June, 2021 at Jela Kubwa area in Rhonda Estate within Nakuru County jointly with another not before Court murdered David Ndebwa.
2. The accused was arraigned on the 14th of December, 2021 to the charge to which he pleaded “*Sio Ukweli*” (It is not true). The matter then proceeded for hearing with the Prosecution availing eight (8) witnesses in support of its case.
3. According to Section 306 of the Criminal Procedure Code, upon the close of the prosecution’s case, this Court has a duty, to make a finding on whether an accused person has a case to answer or otherwise. At this point the question to be answered is whether the Prosecution has made a *prima facie* case that would warrant this Court to call upon the accused to his defence.
4. In defining what amounts to a *prima facie* case, the Court in Republic v Paul Lang’at [2022] eKLR cited the case of Bhatt v R [1957] EA 332 where the Court of Appeal 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 on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near to 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 true as Wilson J said that the Court is not required at this stage to decide finally whether the evidence is worthy of credit or whether if believed it is weighty enough to prove the case conclusively. That determination can only properly be made when the case for the defence has been heard. It 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.”

5. Article 50 (2) (a) of the Constitution confers to every accused person the right to a fair trial which includes the right to be presumed innocent until ascertained otherwise. Further, Article 50 (2) (f) and (i) of the Constitution guarantees the accused the right to remain silent and not to testify and to also not give self-incriminating evidence.
6. Therefore, the burden of proof is placed on the Prosecution to discharge it and that the evidence should be sufficient to warrant a guilty conviction should the accused opt to remain silent.
7. In the case of Ronald Nyaga Kiura v Republic [2018] KEHC 5030 (KLR) the Court stated:-

“It is important to note that at the close of prosecution, what is required in law at stage is for the trial court to satisfy itself that a *prima facie* 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. 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 rebutted is offered by an accused person. This is well illustrated in the cited Court of Appeal case of Ramanlal Bhat v Republic [1957] EA 332. At that stage of the proceedings the trial court does not concerned itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence.”
8. There is no doubt as to the death of the deceased as the postmortem report produced by PW1 confirms the death. PW3, PW4 and PW7 placed the accused at the scene of crime on the fateful day having been involved in a scuffle with the deceased after demanding payment of Kshs. 500 following the knocking of a child.
9. PW6, the arresting officer, arrested the accused, while he was on patrol when the accused jumped off motorcycle registration number KMLX 969 in an attempt to flee. He was informed that the accused was a suspect in a case and on taking him to Rhonda Police Station, he was informed that the accused had a murder case under DCI Nakuru. He linked the accused to PW8, the investigating officer.
10. In evaluating the testimonies of the witnesses availed by the Prosecution and in order not to prejudice the accused person, caution has to be employed since the evidence required is not one of beyond reasonable doubt and the evidence tendered has to stand on its own should no other explanation in rebuttal is offered by the accused person. I must therefore refrain from delving into the profundity of the evidence.
11. It is therefore my view that the prosecution has established a *prima facie* case on case to answer and the accused is therefore put on his defence.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 24TH DAY OF MARCH, 2025



MOHOCHI S.M.
JUDGE

