Republic v Otuke alias Zephania & 2 others (Criminal Case E021 of 2022) [2025] KEHC 5092 (KLR) (24 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5092 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYAMIRA

CRIMINAL CASE E021 OF 2022

WA OKWANY, J

APRIL 24, 2025

BETWEEN

REPUBLIC .... PROSECUTOR

AND

NELSON BOSIRE OTUKE ALIAS ZEPHANIA .... 1ST ACCUSED

ZABLON NYABUTO OTUKE .... 2ND ACCUSED

JOHN JONTE OTUKE .... 3RD ACCUSED

RULING

1. The accused persons herein are jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence were that on 6th October 2022 at Kiomonso Village, Girango Sub-Location in Masaba North Sub-County within Nyamira County jointly murdered Elkana Omae Bosire (deceased).
2. They pleaded not guilty to the charge. The prosecution called a total of 7 witnesses before closing its case.
3. The court is at this stage required to determine if the prosecution has established a prima facie case against the accused persons so as to require them to be placed on their defence.
4. A case to answer was defined in Republic vs. Joseph Shitandi & Another (2014) eKLR as follows: -

> " A case to answer is a case where if the accused keeps quiet, the evidence of the prosecution should be such that a conviction will result."

5. The procedure for determining whether indeed, the accused has a case to answer was discussed in Republic vs. Stephen Chomba Kamau (2021) eKLR thus: -

> " In Republic vs. Samuel Karanja Kiria (2009) eKLR Justice J.B Ojwang (as he then was) stated:-
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>> 'The question at this stage is not whether or not the accused is guilty as charged but whether there is cogent evidence of his connection with the circumstances in which killing of deceased occurred. That the concept of prima facie case dictates as a matter of law that an opportunity created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled ... The Court of Appeal is Criminal Appeal No. 77/2006 expressed that too detailed analysis of evidence stage at no case to answer stage is undesirable it the court is going to put accused on his defence as too much details in the trial court's ruling could then compromise the evidentiary quality of the defence to be mounted.'"

6. In the present case, I find that the evidence adduced by the prosecution suffices for the accused persons to be informed that they have a case to answer. They are therefore informed that they have a right to address the court as provided under Section 306(2) of the *Criminal Procedure Code*.

7. Accordingly, the accused persons are informed that they have a right to address the court either personally or through their advocate or to give evidence on their own behalf or to make unsworn statements and to call witnesses in their defence. The accused are now requested to elect how they will address the court.

8. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF APRIL 2024.

W. A. OKWANY

JUDGE