



**Republic v Tuwei (Criminal Application E001 of 2024)  
[2025] KEHC 4017 (KLR) (1 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4017 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL APPLICATION E001 OF 2024  
RN NYAKUNDI, J  
APRIL 1, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**WILLIAM KIPKURUI TUWEI ALIAS ELSIE ..... ACCUSED**

**RULING**

1. The accused person is charged with the offence of murder contrary to Section 203 of the [Penal Code](#) as read with Section 204 of the [Penal Code](#). The Particulars of the offence are that on the 4<sup>th</sup> day of November, 2023 at Kariamat Area in Kesses sub-County in the Republic of Kenya murdered Victor Nakwa.
2. The accused pleaded not guilty to the charge and particulars of the offence he was presented at the trial by Mr. Lagat whereas the prosecution was led by Prosecution Counsel M/s Sidi Kirenge. In order to discharge the burden of proof as provided for under Section 107, 108, & 109 of the [Evidence Act](#), to prove the following elements beyond reasonable doubt 7 witnesses were summoned towards discharging that burden as against the Accused person.
  - i. That the deceased is dead
  - ii. That the death was caused unlawfully
  - iii. That there was malice aforethought and
  - iv. That the Accused person directly or indirectly participated in the commission of the alleged offence.
3. The Case for the Prosecution



- PW1 Kiprono Arap Lelei told the court that on 4.11.2023 he received a telephone call about existence of some thieves who wanted to steal culverts. He took the step of visiting the scene that is when he came into contact with two suspects already under arrest and there were other members of the public who had responded to the screams regarding the incident. In the same scene he saw the accused person who was armed with a panga whereas himself was armed with a wooden club. The thieves who fled the scene were pursued by the members of the public including the Accused person.
4. PW4 Amos Lelei also told the court that on the material day he was a sleep on or about 2am when he was woken up by PW1 with regard to some theft occurring around the road. He rushed to the scene and saw two people and the accused was chasing one of them claiming that he was one of the suspects who was destroying the metal scrap used to cover the culvert. He described the scene as a highway used by motor vehicles. According to PW2 there many people who were armed with various weapons including wooden clubs, stones and pangas
  5. PW3 was Edward Okubo testified as a resident of also Kesses where the incident of the theft occurred along Eldoret Nakuru High Way to the best of his collection PW3 told the court that he met two people who were arrested as a suspect of the theft of the culvert.
  6. PW4 Moses Nakwa in his testimony told the court that the deceased was his son whom he had been informed on 5.11.2023 that he had suffered fatal injuries inflicted as a suspect of theft which occurred along Eldoret Nakuru High way.
  7. PW5 Clinton Osoro told the court that he knows the Accused person as the clan elder and the deceased was his friend. According to PW5 on the 4.11.2023 at around 11.00pm, he visited the scene with one Victor where the suspects were stealing the metal sheet. He was able to identify one Nakwa Kimutai who was outside the culvert keeping vigil to secure the scene from being interfered with by any other persons. In a short while he heard screams to the effect “arrest, arrest, & arrest,” and a big crowd arrived at the same scene and started pursuing their suspects. In that same confusion PW5 told the court that he had the accused speaking Nandi to one Ben that there is one who has escaped. That on or about 3.00am he received information that the deceased had passed on and the accused was suspected to have been the person who inflicted the injuries.
  8. PW6 Chief Inspector Fred Bunusu on oath testified that on 4.11.2023 while at Kondoo Police Station he received a telephone call regarding the theft incident along Eldoret-Nakuru High Way. He visited the scene and on arrival there were victims who had been injured and one of them had succumbed to death herein the deceased. The body was collected from the scene and thereafter postmortem was carried on 14.11.2023 at Moi Teaching and Referral Hospital. The Postmortem report was produced in evidence as exhibit No 2.
  9. Finally, it was evidence of PW7 CPL Ali Osman who took charge of the investigation by recording witness statement being part of the persons who identified the body to the pathologist on the 14.11.2023 during the postmortem examination. According to PW7 the investigation revealed the accused person was the one who inflicted the fatal injuries against the deceased.
  10. I have considered the evidence by the prosecution under Section 306 of the [Criminal Procedure Code](#) it is abundant clear that this court must make a determination on account of the evidence whether *prima facie* case has been established on the offence of murder to place the accused person on his defense. If the prosecution case falls short of that threshold, then this court has no option but to acquit the accused person of any wrong- doing. In approaching this decision I rely on the principles in the case of [R v Galbraith](#) [1981] 1.W.L.R. 1039 where the court stated:



- i. If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.
  - ii. The difficulty arises where there is some evidence but it is of a tenuous nature for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon, it is his duty upon a submission being made, to stop the case.
  - iii. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty then the judge should allowed the matter to be tried by the jury. There will of course, as always in this branch of the law be borderline cases. They can safely be left to the discretion to the judge.
11. In this respect one must also be contradictory as to what constitutes a *prima facie* case and one commonly referred to as a motion of no case to answer. In the case of *Republic v Abdi Ibrahim Owl* [2013] eKLR the court endeavored the salient features 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 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."
12. It is the principle of law that in criminal cases the duty of the prosecution is twofold. First is to prove the offence was committed beyond reasonable doubt and secondly it is the accused person before court who committed it. I have weighed the evidence of the seven prosecution witnesses, and I am satisfied that a *prima facie* case has been made out to warrant this court to call upon the accused person to state his defence under Section 306 as read with 307 of the *CPC*.

**GIVEN UNDER THE HAND AND THE SEAL OF THIS COURT THIS 1ST DAY OF APRIL 2025.**

.....  
**R. NYAKUNDI**  
**JUDGE**

