



**Republic v Selebu (Criminal Case E016 of 2022)
[2025] KEHC 5961 (KLR) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5961 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E016 OF 2022
SM MOHOCHI, J
MAY 14, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

VINCENT LEDAMA SELEBU 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 2nd day of March, 2022 at Sarambee Village in Rongai Sub-County within Nakuru County murdered Dominic Kibet Selembu.
2. The accused was arraigned on the 21st of March 2022 and on the 22nd March 2022 answered to the charge to which he pleaded “Nakataa Sio Ukweli” (I refuse. It is not true) plea of “not guilty” was entered. The matter then proceeded for hearing with the Prosecution availing Nine (9) 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 vs 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 -vs- 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 -vs- 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 post mortem report produced by PW7 confirms the death. PW1, PW2, PW3, PW4, PW5 and PW6 some identified the body of the deceased while others placed the accused at the scene of crime on the fateful day having been seated outside his house as the deceased lay bleeding to death. The Accused was all along armed.
9. 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.
10. 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 14TH DAY OF MAY, 2025

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Mohochi S.M.

JUDGE

