



**Republic v Leitiko (Criminal Case E004 of 2023)
[2025] KEHC 10764 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10764 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL CASE E004 OF 2023
AK NDUNG’U, J
JULY 18, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JAMES DESTON LEITIKO RESPONDENT

RULING

1. The Accused, James Deston Leitiko is charged with murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars were that on 05/04/2023 at Lariakorok village in Laikipia North Sub-County within Laikipia County murdered Makini Sakui (herein referred as the deceased).
2. The accused took plea on 16/05/2023 and he pleaded not guilty to the charge. The prosecution called a total of five (5) witnesses. In this ruling, the court is being called upon to decide whether or not the prosecution has made out a prima facie case against the accused that would warrant this court to call upon him to give his defence.
3. The prosecution has filed submissions on a case to answer dated 27/5/25. The defence chose not to put in a rejoinder at this stage.
4. The prosecution case is that the fact and cause of death of the deceased was proved. That PW5 testified that the cause of death was due to head injury following blunt force trauma.
5. Regarding whether the deceased met his death due to unlawful act on the part of the accused person, it is submitted that there was direct evidence from PW1 and PW3 who were eye witnesses who testified that the accused hit the deceased on the head with a Maasai rungu with a metal head. That this was corroborated by the post mortem report which indicated that the deceased had three radiating fractures on his head. Hence there was no doubt that the accused hit the deceased on the head causing an injury which led to the deceased’s death.



6. That from the evidence, the deceased was not armed and was only separating the accused and one Lemoile who were fighting but the accused chose to hit the deceased on the head. The accused did not therefore have a justifiable reason for hitting the deceased. Counsel submitted that the direct evidence was sufficiently corroborated and actively linked the accused to the assault that led to the deceased's death.
7. The learned prosecution counsel further submitted that malice aforethought was proved due to the nature of injuries the deceased sustained, the type of weapon used and the part of the body injured which pointed to an intention by the accused to cause grievous harm. She therefore submitted that the prosecution has satisfied the threshold required to place the accused person on his defence.
8. I have considered the evidence so far from the prosecution's side, the submissions by the prosecution and the authorities cited. As stated above, the issue before me at this stage is whether the evidence so far adduced warrants calling upon the accused to defend himself. In other words, does the accused have a case to answer? In *Republic v. Abdi Ibrahim Owl* [2013] eKLR a prima facie case was defined 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.”

9. The question that this court has to deal with and answer at this stage is therefore, whether based on the evidence before this Court, the court after properly directing its mind to the law and the evidence may convict if the accused chose to give no evidence. It was held in *Ronald Nyaga Kiura v. Republic* [2018] eKLR that;

“It is important to note that at the close of prosecution, what is required in law at this 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 rebuttal 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 concern 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.”

10. It therefore follows that a case to answer ought only to be found where the prosecution’s case, on its own, may possibly, though not necessarily, succeed. Having considered the material placed before the court, it is my view that the prosecution has established a prima facie case for the purposes of a finding that the accused has a case to answer.
11. Accordingly, the Accused is placed on his defence.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF JULY, 2025.

A.K. NDUNG’U

JUDGE

