



REPUBLIC OF KENYA



Republic v Hassan (Criminal Case E001 of 2024) [2025] KEHC 9503 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9503 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MANDERA**

CRIMINAL CASE E001 OF 2024

JN ONYIEGO, J

JULY 3, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

MOHAMED ISSACK HASSAN ACCUSED

RULING

1. The accused person is charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on or about 04.03.2024 at Elwak Township in Mandera Central Sub – County within Mandera County he murdered Paul Munini Muteti.
2. The accused person pleaded not guilty to the offence and the prosecution called 6 witnesses who gave evidence to establish a prima facie case.
3. Having considered the testimonies of the six (6) prosecution witnesses, the question to answer is whether the evidence tendered establishes a prima facie case against the accused, or whether the accused has a case to answer.
4. In *Republic vs 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”.
5. To sustain a conviction on a charge of murder, the prosecution is under both legal and evidential obligation to prove certain ingredients of the offence. The case of *Anthony Ndegwa Ngari vs Republic* (2014) eKLR, listed the elements of the offence of murder as follows: -



- (a) the death of the deceased occurred;
 - (b) that the accused committed the unlawful act which caused the death of the deceased;
and
 - (c) that the accused had malice aforethought.
6. At this stage, the court is not concerned with the test of beyond reasonable doubt but whether there exists some prima facie evidence capable of calling the accused person to state his defence.
7. The *Criminal Procedure Code* under Section 306 provides as follows:
- “(1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit recording a finding of not guilty.
 - (2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate(if any), to give evidence on his own behalf, or to make unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.”
8. I have considered the evidence adduced by the prosecution witnesses against the accused person and the exhibits produced. From the foregoing, I am persuaded that a prima facie case has been established against the accused person to warrant him being placed on his defence. Accordingly, accused is hereby informed of his rights in defence. Firstly, he is at liberty to make sworn testimony in which case he will be subjected to cross examination. Secondly, he can opt to make unsworn testimony in which case he will not be subjected to cross examination. Thirdly, he can opt to keep quiet. In either case, he will be at liberty to call witnesses if he so wishes.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF JULY 2025

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J. N. ONYIEGO
JUDGE

