



Republic v Odori (Criminal Case 57 of 2015) [2025] KEHC 9628 (KLR) (2 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9628 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 57 OF 2015
SM MOHOCHI, J
JULY 2, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

EZEKIEL NYARIMBO ODORI ACCUSED

RULING

1. The accused Ezekiel Nyarimbo Odori was on the 15th September 2015 arraigned before this court and charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars are that on the 8th day of December, 2013 at Mzee Wanyama Area within Nakuru County, murdered Peter Kimani Kamau.
2. The accused person pleaded not guilty to the charges preferred against him. The prosecution presented four (4) Witnesses and one (1) exhibit constituting Exhibit 1, in support of its case.
3. When a Court with regard to the material placed before it, finds that the accused person should be put on their defence the Court ideally would not give a detailed ruling as the same can be addressed in the final decision. On the other hand, if the Court was of the considered view that an accused person has no case to answer, it would be imperative to give detailed reasons.
4. Section 306 of the [Criminal Procedure Code](#) calls upon this Court to make a Ruling on whether the prosecution had established a prima facie on case to answer warranting the accused person to be put on his defence or otherwise.
5. At this stage of the proceedings what the Court is required to do is to establish whether a prima facie case has been established and not proof beyond reasonable doubt. A prima facie case was defined in [Republic v Abdi Ibrahim Owl](#) [2013] KEHC 2122 (KLR) 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.”

6. A prima facie case therefore is essentially not made out of proof beyond reasonable doubt, but on rebuttable presumption that the accused person is guilty of the offence he is being accused of committing.
7. I have considered the evidence adduced by the prosecution and note that, the prosecution was able to adduce evidence on the fact of death but failed to adduce evidence of an unlawful act or omission remotely linked to the accused resulting in the death of the deceased. No Circumstantial evidence has been offered to provide a linkage of the alleged crime to the accused.
8. PW1 was a witness the owner of the home where a circumcision ceremony took place attended by a number of youth after which ceremony the deceased was stabbed outside his compound at around 11pm. He never saw the incident and never directly implicated the accused. PW2 was the deceased father whose evidence did not touch on the events leading to the death and only PW3 evidence of the pathologist confirmed the death being caused by “massive blood loss due to severed left Femoral Artery by sharp force trauma in keeping with homicide” the last witness was a police officer who attempted to implicate the accused by laying his basis of arresting the accused in 2013 when he went to him at the DC’s office Nyamira North Sub-county and said he had killed somebody at Ikonje Market then fled to Nakuru to his uncle Alex Mangare.
9. The said testimony fell short of all legal standards for the court to attach any weight on it. If this witness was aware of a confession being made and as a seasoned police officer then he ought to have taken measures to obtain the same in line with the legal requirements. This evidence is equally of remark in that the alleged murder before court relates to an incident in Nakuru not Nyamira County and such evidence is to be disbelieved. Thirdly the accused was arraigned before court in September 2015 and if PW4 arrested him two years earlier, one wonders why he was never arraigned before court.
10. In order for the accused to be put on their defence, there should be prima facie case established by the Prosecution. None of the four witnesses called could place the accused at the scene save for a purported confession as evidenced by PW4 which evidence falls short of the law relating to admissibility of confessions under the law of evidence.



11. Under Article 50 (2) (a) of *the Constitution*, the accused is presumed innocent until proven otherwise. This case is however marred with gaps and the same can only be interpreted to the benefit of the accused person. See *Republic v Martin Thinguku* [2021] KEHC 955 (KLR).

12. In *Republic v Patrick Mutisya Mutinda* [2022] KEHC 1622 (KLR):-

“In my view, where clearly the prosecution’s case as presented even if it were to be taken to be true would still not lead to a conviction such as where for example an accused has not been identified or recognized and there is absolutely no evidence whether direct or circumstantial linking him to the offence it would be foolhardy to put him on his defence. There is no magic in finding that there is a case to answer and a case to answer ought only to be found where the prosecution’s case, on its own, may possibly, though not necessarily, succeed. An accused person should not be put on his defence in the hope that he may prop up or give life to an otherwise hopeless case or a case that is dead on arrival. Defence case is not meant to fill in the gaping gaps in the prosecution case.”

13. By the material placed before me I am not convinced that, the evidence before Court by the prosecution would be sufficient to sustain a conviction even if the accused person remained silent. It is an unfortunate incident and a great injustice to the deceased person streaming from the laxity of the investigators and the prosecution.

14. The upshot of the foregoing is that, the prosecution’s case has not met the test of a prima facie case to warrant the accused person to be called upon to answer. The accused is hereby acquitted of the offence of murder pursuant to Section 306(1) of the *Criminal Procedure Code*.

15. The Accused shall forthwith be set to liberty unless otherwise lawfully held.

It is so ordered.

DATED SIGNED AND DELIVERED ON THIS 2ND DAY JULY 2025.

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MOHOCHI S.M

JUDGE

Quorum

Ms. Morande- Advocate for the accused

Mr Kihara -Prosecuting Counsel for the State

