



**State v Ademi (Criminal Case E023 of 2023)  
[2025] KEHC 12650 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12650 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL CASE E023 OF 2023  
A MABEYA, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**STATE ..... PROSECUTION**

**AND**

**SILAS ONZENGO ADEMI ..... ACCUSED**

**RULING**

1. The accused was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence were that on the night of 9<sup>th</sup> and 10<sup>th</sup> September 2023 at Musunguti village in Kisumu West Sub County within Kisumu County jointly with others not before court murdered Edwin Olienyi.
2. The accused was arraigned before this court, pleaded not guilty, calling upon the prosecution to discharge its burden of proof and disapprove his innocence as provided for in Article 50(2)(a) of the *Constitution*.
3. The prosecution called eight (8) witnesses, none of whom was an eye witness. I have reviewed each testimony of the eight witnesses. I take cognizance of the fact that the submissions for a motion of a case to answer does not call upon the court to look at the finer details of the prosecution case but to satisfy the yardstick of material evidence capable of calling the accused to answer in rebuttal.
4. Section 306 of the *Criminal Procedure Code* requires of this Court upon reflection and evaluation of evidence to establish whether a prima facie case as against the accused person has been made on the following elements:
  - a. The death of the deceased;
  - b. The cause of the death;
  - c. Whether the death was caused by an act or omission of the accused; and



- d. Whether the death was actuated by malice aforethought.
5. 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*, 8<sup>th</sup> 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. 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 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 on his own behalf or 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 is intended to call any witness as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.”
8. From the above, it is clear that what the law requires at this stage is to determine whether the prosecution had made out a *prima facie* case. It is not to evaluate evidence or consider the credibility of witnesses. For clarity purposes, a *prima facie* case is not the same as prove which comes later when the court is to make a finding of guilt of the accused. It is evidence on the face of it which can demonstrate



that the elements of the offence as framed in the charge sheet indicates some sufficiency to prove that the accused ought to answer or give evidence in rebuttal.

9. At this stage, commenting on the evidence is restricted mainly because only one side which has made attempts to present evidence in support of their position in the proceedings. It will be more prejudicial if the court was to import a language to the decision which is likely to be prejudicial to the defence case in the final analysis. The court must be as brief as it can and leave the rest for a full hearing on both sides without making a conclusive observation of the facts.
10. Accordingly, I find that the prosecution has made out a prima facie case against the accused person and hereby puts him on his defence.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 17<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

