



State v Oloo (Criminal Case E023 of 2022) [2024] KEHC 318 (KLR) (24 January 2024) (Ruling)

Neutral citation: [2024] KEHC 318 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E023 OF 2022
RE ABURILI, J
JANUARY 24, 2024**

BETWEEN

STATE PROSECUTION

AND

BRIAN ODHIAMBO OLOO ACCUSED

RULING

1. The accused person in this case is Brian Odhiambo Oloo, a male adult of sound mind as per the mental assessment report filed prior to taking of the plea. He stands charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of the amended Information dated November 17, 2023 are that the accused person on the 30th Day of July, 2022 at 00400 hours at Reru Village, Nyahera Sub location, Kisumu West sub county within Kisumu County, jointly with others not before court he unlawfully murdered Steve Joseph Oyugi.
2. The accused person initially took plea on 22/9/2022 and denied committing the offence of Murder as charged and the prosecution has called none (9) witnesses who have testified against him and closed its case on December 11, 2023.
3. The defence counsel, Mr. Otieno did request for time to file written submissions on no case to answer. This court granted him 14 days to file the said submissions but as at today the 24/1/2024 when I am reading this ruling, which I wrote on 9th January, 2024, no such submissions had/have been filed.
4. This court is therefore called upon to determine whether, at this stage, based on the evidence adduced by the nine prosecution witnesses, the prosecution have established a prima facie case to warrant the accused person to be placed on his defence to answer to the charge of Murder.
5. Essentially, the burden of proof lies on the Prosecution throughout the trial to prove their case against the accused person. That burden does not shift to the accused person. This is so because the accused person’s constitutionally guaranteed rights include the right to remain silent, the right to adduce and challenge evidence and the right not to give any self-incriminating evidence.



6. Thus, at this stage, the prosecution is not expected to have proved their case against the accused person beyond reasonable doubt. The measure is for a prima facie case to be established.

7. A prima facie case is established where the evidence tendered by the Prosecution is sufficient on its own for a court of law to return a guilty verdict even if the accused person opted to remain silent.

7. Section 306 (1) of the [Criminal Procedure Code](#) provides that:

“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 the several or any one of the 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, record a finding of not guilty.”

8. Having considered the testimonies of the nine prosecution witnesses, the question is whether the evidence tendered establishes a prima facie case against the accused person herein, or whether the accused has a case to answer and if not, then he should be set at liberty.

9. What is a prima facie case? In [Republic v Abdi Ibrahim Owi](#) [2013]eKLR, the court defined a prima facie case as follows:

“‘Prima facie’ is a latin word defined by [Black’s Law Dictionary](#) 8th Edition as, “sufficient to establish a fact or raise presumption unless disapproved or rebutted”. ‘Prima facie’ is defined by the same dictionary as “the establishment of a legally required rebuttable presumption.”

10. A prima facie means the establishment of a rebuttable 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 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’s case, the case is merely one in which on full consideration might possible 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 questionthere 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 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, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”.

11. From the above detailed holding by the court, the question is whether this can, court on the basis of the evidence so far tendered by the Prosecution, and this court properly directing itself to the law and evidence, convict if the accused chooses not to give any evidence?



12. In *Ronald Nyaga Kiura v Republic* [2018]e KLR, it was held that:

“It is important to note that at the close of the Prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie case 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*...”

13. The trial court is however cautioned that at this stage, it should not make definitive findings should it conclude that a prima facie case has been established against the accused person.

14. In *Festo Wandera Mukando v Republic* [1980] KLR 103, it was stated as follows:

“...we draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgment. Where a submission of “no case” to answer is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the count or counts concerned.”

14. In this case, the incident took place at night was witnessed by PW2 who did not recognize the person whom she alleges attacked her and the deceased and that the said person raped her. The prosecution has adduced evidence which places the accused person at the scene of the alleged murder by way of forensic material. Without delving into the depths of the evidence so far adduced, I am satisfied that the Prosecution has established a prima facie case against the accused person to warrant him to be placed on his defence. I therefore find that the accused person herein Brian Odhiambo Oloo has a case to answer and he is therefore placed on his defence.

15. The provisions of section 306(2) of the *Criminal Procedure Code* and article 50(2)(i)(j)(k) of the *Constitution* are hereby explained to the accused person in the presence of his advocate.

16. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 24TH DAY OF JANUARY, 2024

R.E. ABURILI

JUDGE

