



REPUBLIC OF KENYA



**Republic v Bante (Criminal Case 11 of 2018)
[2024] KEHC 1226 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1226 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE 11 OF 2018
JN ONYIEGO, J
FEBRUARY 15, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ISMAIL BIDU BANTE ACCUSED

RULING

1. The accused person herein 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 05.10.2018 at Kibilay Location in Habaswein Sub County within Wajir County murdered Rahma Dekow Gabow. Upon arraignment in court, he pleaded not guilty and a plea of not guilty was entered.
2. The case proceeded for trial with the prosecution calling Six (6) witnesses in support of its case thus inviting this court to make a finding whether the prosecution has a case to answer or not.
3. Under section 306 of the [Criminal Procedure Code](#) Cap 75 Laws of Kenya, this court has a duty, upon close of the prosecution's case, to make a ruling or a decision on whether an accused person has a case to answer or not. Section 306(1) does provide that, when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is no evidence that the accused person committed the offence, it should, 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.
4. Under section 306(2) on the other hand, when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is evidence that the accused person committed the offence, the court should proceed to put the accused to his defence.
5. As such, at this stage, this court's role is to consider the evidence on record and make a determination as to whether the same presents a prima facie case that would warrant this court to call upon the accused person to give his defence. Under 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. [See *Ramanlal Trambaklal Bhatt v R* [1957] E.A 332 at 334 and 335].

6. However, it is trite that, where the court is not acquitting the accused person at the close of prosecution's case, there is no need for a reasoned ruling for a case to answer. Reasons should only be given where the submission of a no case to answer by the accused is upheld and the accused is to be acquitted. [See *Festo Wandera Mukando v Republic* [1980] KLR 103].
7. I have considered the evidence tendered by the prosecution in this matter as required of this court and from the entirety of the said evidence, it is my view that the prosecution has made a prima facie case against the accused person. He therefore has a case to answer and is put on his defence.
8. Accordingly, the accused has a right to elect whether to give sworn testimony in which case he will be subjected to cross examination by the prosecution. Secondly, he can elect to give unsworn testimony in which case he will not be subjected to cross examination. Lastly, he can elect to keep quiet. In either choice, he shall be at liberty to call witnesses.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15TH DAY OF FEBRUARY 2024

J.N. ONYIEGO

JUDGE

