



**Republic v Kanana (Criminal Case E013 of 2022)
[2024] KEHC 2613 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2613 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E013 OF 2022
JN ONYIEGO, J
MARCH 15, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

BRIGIT KANANA ACCUSED

RULING

1. The accused person herein 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 are that on 08.07.2022 at about 2130hrs at Bulla Central area in Jamuhuria Location within Mandera County, he murdered Felix Kinyua. Upon arraignment in court, he pleaded not guilty and a plea of not guilty was entered.
2. The case proceeded to full trial and the prosecution called Seven (7) witnesses in support of its case. After the close of its case, the court has a duty, to make a ruling or a decision on whether the accused person has a case to answer or not. Under section 306(1), 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 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.
3. 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.
4. 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] EA 332 at 334 and 335].

5. 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].
6. I have considered the evidence tendered by the prosecution in this matter in particular that of pw1 and pw2. As required of this court and from the entirety of the said evidence, it is my finding that the prosecution has made a prima facie case against the accused person. She therefore has a case to answer and is put on her defence.
7. The accused shall pursuant to section 211 of the CPC choose to make sworn testimony, in which case he shall be cross examined by the prosecution; he can as well give unsworn testimony whereby he will not be cross examined or opt to keep quiet. In either option, he shall be at liberty to call witnesses.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 15TH DAY OF MARCH 2024

J. N. ONYIEGO

JUDGE

