



**Republic v Nunow (Criminal Case E005 of 2022)
[2024] KEHC 3012 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3012 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E005 OF 2022
JN ONYIEGO, J
MARCH 15, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ABDIMAJID MOHAMMED NUNOW 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 19.02.2022 at around 1500hrs at MetaMeta Market in Mandera East sub County within Mandera County murdered one Ali Hassanow Jillo. Upon arraignment in court, he pleaded not guilty and a plea of not guilty was entered.
2. The case proceeded for full trial with the prosecution calling Six (6) witnesses in support of its case; Having closed its case, this 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] E.A 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 the evidence of pw1, pw2, pw3 and pw4 who witnessed the accused stab the deceased. 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. He therefore has a case to answer and is accordingly put on his 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

