



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Onyango (Criminal Case E007 of 2022)
[2024] KEHC 2151 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2151 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E007 OF 2022
RE ABURILI, J
MARCH 6, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SIMON OTIENO ONYANGO ALIAS AMISO ACCUSED

RULING

1. The accused person Simon Otieno Onyango alias Amiso is charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. Particulars of the information dated 16th March 2022 are that on the 22nd day of February 2022 at Nyawan Village, in Kisumu East Sub-county within Kisumu County, the accused person murdered Phillip Kipkorir Kirong.
3. The accused person took plea on 29th March 2022 and denied committing the offence.
4. The prosecution called 9 witnesses who testified and were cross examined by the defence counsel. The prosecution has now closed its case and the question is whether considering the evidence adduced by the 9 prosecution witnesses, the court can say that a prima facie case has been established against the accused person to warrant him to be placed on his defence.
5. It should however be noted that the accused person's rights to be presumed innocent is guaranteed by the [Constitution](#) at Article 50(2) and that he is therefore under no duty to prove his innocent or to give evidence explaining what transpired as per the information.
6. At this stage, however, the prosecution is not being called upon to demonstrate that it has proved its case against the accused person beyond reasonable doubt, but to establish a *prima facie* case against the accused person.



7. In addition, should the court, upon examining the evidence on record be of the view that a prima facie case has been established, then it should not delve deep into the merits of the case as that would prejudice the accused person who has not had an opportunity to be heard in defence.
8. In the instant case, considering the evidence of the 9 prosecution witnesses, I am persuaded that the prosecution has made out a *prima facie* case against the accused person to warrant him to be placed on his defence.
9. Accordingly, I find that the accused person Simon Otieno Onyango alias Amiso has a case to answer and it placed on his defence for the alleged murder of Phillip Kipkorir Kirong.
10. The provisions of Section 306(2) of the [Criminal Procedure Code](#) as read with Article 50(2) of the [Constitution](#) shall be explained to the accused person in the presence of his advocate.
11. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 6TH DAY OF MARCH, 2024

R. E. ABURILI

JUDGE

