



**Republic v Madero (Criminal Case E002 of 2022)
[2024] KEHC 2033 (KLR) (1 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2033 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CRIMINAL CASE E002 OF 2022**

M THANDE, J

MARCH 1, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

YUSUF DUBE MADERO RESPONDENT

RULING

1. The accused, Yusuf Dube Madero, is charged with the offence of murder contrary to Section 203 as read Section 204 of the Penal Code. It is alleged that on 15.1.22 at about 0200 hours at Mwanje village of Konemansa location, Tarasa Division, Tana Delta sub-county within Tana River County, the accused murdered Abdallah Jaro Saidi. The accused denied committing the offence.
2. The prosecution closed its case after calling 6 witnesses. The Court is now called upon to determine whether a *prima facie* case has been established to warrant the accused person to be placed on his defence to answer to the charge of murder.
3. Section 306(1) of the Criminal Procedure Code stipulates the procedure to be followed at the close of the prosecution case as follows:
 1. 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 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.
 2. When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require



him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.

3. If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon him to enter upon his defence.
4. At this stage, after hearing the testimony of the prosecution witnesses, the Court, the Court shall determine whether a prima facie case has been established. Put differently, the Court shall determine whether it considers that there is evidence that the accused herein committed the offence. In the event that the Court is so satisfied, it shall inform him of his right to address the court. This may be done either personally or by his advocate. He shall also be informed of his right to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and to state whether he intends to call any witnesses as to fact other than the accused person himself. Having done so, the Court shall record the fact.
5. A *prima facie* case was defined in the case of [Republic v. Abdi Ibrahim Owl](#) [2013] eKLR by Mutuku, J. as follows:

“*prima facie*” is a Latin word defined by [Black’s Law Dictionary](#), 8th Edition as

“Sufficient to establish a fact or raise a presumption unless disproved or rebutted”.

“*prima facie* case” is defined by the same [dictionary](#) as

“The establishment of a legally required rebuttable presumption”.

To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with.

In [Ramanlal Trambaklal Bhatt v. R](#) [1957] EA 332 at 334 and 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, the case is merely one “which on full consideration might possibly 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 question whether there 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 is 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 tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.” (Underlining is mine).



6. And in *Anthony Njue Njeru v. Republic* [2006] eKLR, the Court of Appeal held as follows:

“Having expressed himself so conclusively, we find it difficult to understand why the learned Judge found it necessary to put the appellant on his defence. Was there a *prima facie* case to warrant the trial court to call upon the appellant to defend himself? It is a cardinal principle of our law that the onus is on the prosecution to prove its case beyond reasonable doubt and a *prima facie* case is not made out if, at the close of prosecution the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction”.

7. As I consider the evidence adduced by the prosecution, I am keenly aware that at this stage, the issue before me is whether a *prima facie* case has been established, warranting the accused to defend himself. PW1 Musa Godana Dube stated that he was on the material date with PW2, Galgalo Twalib, the accused and the deceased. Both he and PW2 gave an eye witness account of what transpired on the material date thus connecting the accused with the death of the deceased.

8. It is well settled that that it is undesirable to give a reasoned ruling at the close of the prosecution case. Having considered the material placed before me and without delving further into the evidence adduced, I am satisfied that the prosecution has established a *prima facie* case. The accused has a case to answer and is accordingly placed on his defence.

DATED AND DELIVERED IN GARSEN THIS 1ST DAY OF MARCH 2024

M. THANDE

JUDGE

