



**Republic v Mambo (Criminal Case E006 of 2022)
[2024] KEHC 2078 (KLR) (1 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2078 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CRIMINAL CASE E006 OF 2022**

M THANDE, J

MARCH 1, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

KEVIN MBUGUA MAMBO RESPONDENT

RULING

1. The accused, Kevin Mbugua Mambo, is charged with the offence of murder contrary to Section 203 as read Section 204 of the Penal Code. It is alleged that on 29.8.22 at about 2230 hours at Zebra Village, Lamu West Sub-County within Lamu County, the accused murdered Muthui alias Arabu. The accused denied committing the offence.
2. After calling 7 witnesses, the prosecution closed its case. The Court is now called upon to determine whether, at this stage, in light of the evidence adduced by the prosecution witnesses, 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. The right of an accused person to a fair trial is stipulated in Article 50(2) of the Constitution. This includes inter alia, the right to be presumed innocent until the contrary is proved; to be informed of the charge, with sufficient detail to answer it; to have adequate time and facilities to prepare a defence; not to give incriminating evidence and to remain silent, and not to testify during the proceedings. To this end, the burden of proof in a criminal trial lies with the prosecution throughout the trial to prove its case against an accused person. At this stage however, the prosecution is not expected to have proved their case beyond reasonable doubt and need only establish a *prima facie* case.



4. 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.
5. As I consider whether the prosecution has established a prima facie case to warrant the accused to be placed on his defence, I am guided by the decision in *Republic v Abdi Ibrahim Owl* [2013] eKLR where Mutuku, J. defined a prima facie case 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] E.A 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. PW6 Lucia Wanjiru Ngure gave an eye witness account of what transpired on the material date thus connecting the accused with the demise 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 in the evidence adduced therefore, 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

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M. THANDE

JUDGE

