



REPUBLIC OF KENYA



**Republic v Owuor (Criminal Case E002 of 2022)
[2024] KEHC 3712 (KLR) (16 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3712 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E002 OF 2022
RE ABURILI, J
APRIL 16, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

FREDRICK ODHIAMBO OWUOR ACCUSED

RULING

1. The accused person herein Fredrick Odhiambo Owuor is charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. Particulars of the offence as per the information dated 13th January 2022 are that on the night of 30th and 31st December 2021 at unknown time at Daraja Mbili area in South Kapuonja Sub-location within Kisumu West Sub-county in Kisumu County, the accused person murdered Eunice Aoko.
3. The accused person took plea on 3rd February 2022 denying the offence and the case was set down for hearing.
4. The Prosecution have so far tendered evidence by calling seven (7) witnesses and the question now at this stage, for this court, is to determine whether the prosecution has established a *prima facie* case against the accused person to warrant him to be placed on his defence.
5. The burden of proof lies on the prosecution throughout the trial. That burden of proof does not shift to the accused person to prove his innocence. That is the only way fair trial of the accused person can be guaranteed as stipulated in Article 50 (2) of the [Constitution](#).
6. It follows that an accused person is under no duty to give any evidence in defence to rebut the prosecution's case. An accused person has the right to remain silent and the court would decide the case on the basis of the evidence adduced, without making any adverse inference against him.



7. However, an accused person's right to adduce evidence and challenge the evidence adduced against him is guaranteed under Article 50 (2) (k) of the Constitution, albeit he also enjoys the right not to give any self-incriminating evidence. See Article 50 (2) (l) of the Constitution.
8. Having said so, the standard of proof required in criminal cases is that of beyond reasonable doubt. Nonetheless as earlier stated, that standard is not applicable at this stage where the prosecution is only expected to have established a *prima facie* case against the accused person to warrant him to be placed on his defence.
9. A *prima facie* case is established where the evidence tendered by the Prosecution is sufficient on its own for a court of law to return a guilty verdict even if the accused opts to remain silent.
10. Under Section 306 (1) of the Criminal Procedure Code:

“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 the several or any one of the 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.”
11. Having considered the testimonies of the six (6) prosecution witnesses, the question is whether the evidence tendered establishes a *prima facie* case against the accused, or whether the accused has a case to answer.
12. In Republic v Abdi Ibrahim Owi [2013] eKLR, the court 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 presumption unless disapproved or rebutted”. ‘*prima facie*’ is defined by the same dictionary as “the establishment of a legally required rebuttable presumption.”
13. In simple terms, *prima facie* means the establishment of a rebuttable 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 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’s case, the case is merely one in which on full consideration might possible 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 ...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 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, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”



14. From the above detained holding by the court, can this court on the basis of the evidence so far tendered by the Prosecution, and this court properly directing itself to the law and evidence convict if the accused chooses not to give any evidence?
15. In *Ronald Nyaga Kiura v Republic* [2018] eKLR, the court held:

“It is important to note that at the close of the Prosecution, what is required in law at this stage is for the trial court to satisfy itself that a *prima facie* case has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the *Criminal Procedure Code*...”
16. The trial court is however cautioned that at this stage, it should not make definitive findings should it conclude that the accused has a case to answer.
17. In *Festo Wandera Mukando v Republic* [1980] KLR 103, the court held:

“...we draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, and an extreme case, may require an appellate court to set aside an otherwise sound judgment. Where a submission of “no case” to answer is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the court or counts concerned.”
18. Having considered the evidence of the seven (7) prosecution witnesses, and without delving deep into the merits of that evidence as that would prejudice the accused person herein, I am satisfied that a *prima facie* case has been established against the accused person to warrant him to be placed on his defence.
19. Accordingly, I find that Fredrick Odhiambo Owuor has a case to answer and he is placed on his defence. His rights under Article 50 (2) (i) (k) and (l) of the *Constitution* as read with Section 306 (2) of the *Criminal Procedure Code* are guaranteed and explained to him in the Dholuo language which he understands best, by the Court Assistant Mr. Osir and in the presence of his counsel, Mr. Maua.
20. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 16TH DAY OF APRIL, 2024

R. E. ABURILI

JUDGE

