



**Republic v Kinyili (Criminal Case 24 of 2019)
[2024] KEHC 17208 (KLR) (10 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 17208 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE 24 OF 2019**

TM MATHEKA, J

APRIL 10, 2024

BETWEEN

THE REPUBLIC PROSECUTOR

AND

ALEXANDER MUMO KINYILI ACCUSED

RULING

1. The accused is charged with murder under Section 203 as read with Section 204 of the [Penal Code](#).
2. It is alleged that on the night of 20th and 21st August, 2019 at Kyemundu village, Nzau Sub County within Makueni County he, with others not before the court murdered Patrick Kilonzo Mumo.
3. Plea was taken on 23rd October, 2019 and he pleaded not guilty before Hon. Ongundi J.
4. Trial proceeded before Hon. Dulu J. who heard 3 witnesses. Thereafter, I heard 2 witnesses.
5. At the close of the case for the prosecution counsel for the accused Janet, Jackson and Susan LLP Advocates filed submissions on no case to answer.
6. It is submitted that the prosecution has failed to establish a prima facie case against the accused person to warrant him being put on the defence. It is averred that Section 107 of the [Evidence Act](#), and the age old citation from *Bhatt v R* [1957] EA applies to this case on the onus of the prosecution to prove its case beyond a reasonable doubt. That the accused was not placed at the scene, and that no nexus has been established by prosecution witnesses between the accused person and the offence. The court is urged, on the strength of *May v Osullivan* [1958] 92 CLR 654 and *R v Galbraith* [1981] WLR 1039 to uphold the submissions of no case to answer and to acquit the accused under Section 210 of the [Criminal Procedure Code](#).
7. I have to point out that the applicable law for murder cases in Section 306 of the [Criminal Procedure Code](#) which provides for what should happen when the prosecution has closed its case. Either the court



will find that there is no evidence - and enter a finding of not guilty or find that there is reason for an accused person to be put on his defence.

8. In the latter to finding the court is discouraged from giving reasons.
9. In my view - upon considering the evidence placed before me - I find that there is prima facie evidence to warrant the accused person being put on his defence vide Section 306(2) of the [*Criminal Procedure Code*](#).
10. It is so ordered

SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA.

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