



**Republic v Ramadhani (Criminal Case E017 of 2023)  
[2024] KEHC 3242 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3242 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL CASE E017 OF 2023  
RN NYAKUNDI, J  
APRIL 4, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MBERWA KAMAIS RAMADHANI ..... ACCUSED**

**RULING**

1. The accused person is facing a charge of murder contrary to section 203 as read with 204 of the [penal code](#). The particulars are that on the 8<sup>th</sup> day of April 2023 at Kakuma Refugee camp in Turkana West sub-county within Turkana County murdered Fatuma Abdikadir.
2. The accused pleaded not guilty to the offence calling upon the prosecution under Article 50 (2) (a) of the [constitution](#) to adduce evidence in consonant with the right on presumption of innocence bestowed upon the accused until the contrary is proven by the state. Section 107 (1) and 108 of the [Evidence Act](#) provides inter-alia that a party to any proceedings has the burden to directly or indirectly prove the facts in issue and in the case of the criminal cases all those elements of the offence must be proved beyond reasonable doubt. This burden in criminal cases is the responsibility of the state or as its commonly referred to the prosecution under Article 157 (6) (7) of the [constitution](#) to sufficiently tender evidence to prove the contrary on the right of the presumption of innocence accorded to the accused until the case is concluded.
3. In our circumstances section 306 of the [criminal procedure code](#) obligates the court to make a finding as to whether a prima facie case has been established by the state to warrant the accused person or persons to be placed on their defence. The contrary to that legal position is that the prosecution has failed to surmount the hurdle of a prima facie case to render it untenable in law for a motion of no case to answer in favour of the accused to carry the day. It is relevant at this stage to make reference to the articulated



principles in the Nigerian case of *Ajisogun -vs- The state* (1998)13 NWLR Pt 581; in which the court summed up the position as follows:

“ A submission of “no case to answer” in a criminal court or trial is a submission on point of law. Pure and Simple. Nothing more and nothing less. It is a legal submission. It is analogous to a demurer in a civil court or trial. All the accused is saying at that stage of the trial is to this effect: Accept all that the prosecution has said through its witnesses, yet it (the prosecution) cannot secure a conviction either of the offence charged or of any other alternative offence of which I may possibly be convicted, upon the evidence.

It becomes rather apparent from the above that in every criminal trial, there are two (2) stages the prosecution may attain and seek to get through or over. The first stage or hurdle is the stage of making out a “prima facie” case, a case requiring an accused to enter upon his defence, to explain. Put nakedly and simply there ought at this stage, to be some evidence direct or indirect against the accused which evidence, unless and until it be displaced or explained off, would be enough to support a conviction either of the offence charged or of any other alternative offence the accused may possibly be convicted of. If there be any such evidence, then a submission of “no case to answer” must fail. Why? Because there is a “case to answer”.

4. The second stage or hurdle may never be reached, provided the prosecution fell and failed in the first stage or hurdle. The stage is the stage of establishing the guilt of the accused, subject of course, to any statutory exceptions there be or may be, beyond reasonable doubt. And this stage is reached after all the evidence has been called and received from both sides.
5. An accused is entitled to an acquittal on the failure of the prosecution at either of the stages or hurdles. But a failure at the first stage does not, “ipso facto” ensure or warrant a success on the second stage.
6. At the first stage, (i.e. “no case to answer”) no issue of credibility ever arises. It does not. The trial court ought not to be asked to believe or disbelieve any witness.”
7. In the instant case the prosecution adduced evidence from four (4) witnesses to prove the following elements;
  - i. Death of a human being
  - ii. Unlawful causation of that death
  - iii. The said unlawful causation having been done with malice aforethought
  - iv. The participation of the accused in causing the said death
8. These witnesses were PW1 Hussein Abdallah who testified to the effect that on September, 4<sup>th</sup> 2023 as he woke up in the morning he heard a voice of a girl crying from the neighbouring compound. He therefore decided to rush to the scene and that is when he found the accused person while armed with a knife holding the deceased by the name Fatuma Adbikadir. At the spur of the moment PW1 told the court that he saw the accused person using that knife to inflict fatal injuries around the neck of his victim. Next in line was PW2 Ayan Olad Ahmed who in his evidence testified that on 4<sup>th</sup> September, 2023 on or about 8.45am he saw a child playing outside and in a little while screams were heard from members of the public that the same child has been killed. According to PW2 the victim of the crime in question was his daughter and the person who had unlawfully caused the death was the accused person in this indictment. In addition the prosecution summoned the evidence of PW3 by the name Alain Kanaume who doubles up as the community protection and peace officer within the refugee camp.



PW3 further testified that on the receipt of the report in conjunction with the police a search and find the accused person to answer to the unlawful act was launched. The role played by PW3 was also confirmed by PW4 P.C Joel Kimaiyo who also produced the post mortem report dated 8<sup>th</sup> September, 2023 and the inventory of the exhibits recovered from the accused person.

9. The court in *Nyame vs FRN*(2010) Vol. 3 (Pt 10) Misc 34 made the following observations;

“...the term prima facie case was defined in *Ajidagba vs IGP* following the Indian case of *Sler Singh vs Jitendranchen* as follows: what is meant by prima facie case? It only means that there is ground for proceeding. But a prima facie case is not the same as proof which comes later when the court has to find whether the accused is guilty or not guilty and the evidence discloses a prima facie case when it is such that if uncontradicted and if believed it will be sufficient to prove the case against the accused. What the information must disclose at this stage is a certainty; not the guilt of the accused but a prima facie case to answer.”

10. Given this back ground it must be understood all what the court is required to do is to subject the evidence presented by the prosecution as against accused person and in doing so exercise discretion whether it's a fit case for the accused person to be invited to offer evidence in rebuttal. With regard to the circumstance of this case the inference to be drawn is that of a prima facie case usually determined at the end of the case as to whether the standard and burden of proof at half time vested with the prosecution by the constitution has been discharged. It is reasonable therefore to place the accused person on his defence under section 306 as read with section 307 of the criminal procedure code.

**DATED, SIGNED AND DELIVERED AT LODWAR THIS 4<sup>TH</sup> DAY OF APRIL, 2024**

In the presence of;

Mr. Kakoi for the state

Mr. Muyesu legal counsel

.....

**R. NYAKUNDI**

**JUDGE**

