



Republic v Ekaale (Criminal Case E004 of 2023) [2024] KEHC 4405 (KLR) (2 May 2024) (Ruling)

Neutral citation: [2024] KEHC 4405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL CASE E004 OF 2023
RN NYAKUNDI, J**

MAY 2, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

NICHOLAS EKIRU EKAALÉ ACCUSED

RULING

1. The accused person is charged with the offence of murder contrary to section 203 and 204 of the *penal code*. The brief particulars are that Nicholas Ekiru Ekaale on the 30th day of December, 2022, at Kipiti Kibari village within Turkana West sub County murdered Andrew Kokiro Lopuya. The accused pleaded not guilty to the offence vesting the burden of proof upon the prosecution to prove its case beyond reasonable doubt. The lead counsel for the prosecution and Assistant Director Mr. Edward Kakoi while the defence was been conducted by legal counsel M/S Kariuki.
2. In terms of section 107(1), 108, 109 of the *evidence Act*. At the close of the prosecution case section 306 of the *criminal procedure code* requires this court to determine whether or not the evidence adduced from the four (4) witnesses has established a prima facie case against the accused person. The significance of this provision is that only cases which meet the evidential threshold of a particular crime will necessitate an accused person to be put on his or her defence. On the other hand, if the prosecution fails to adduce evidence to prove any of the elements of the offence charged or any cognate offence the accused will be entitled to an acquittal. The definition as to what constitutes a prima facie case has been a subject to courts interpretation as seen in the case of These are the same principles illuminated in the case of *Ramanlal Trambaklal Bhatt V Republic* (1957) EA 332 as follows: -
 - i. ‘Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot argue that a prima facie case is merely one which on full consideration might possibly be taught sufficient to sustain conviction. This is perilously near suggesting that the court could not be prepared to convict if no defense is made, but rather hopes the defense will fill the gaps in the prosecution case, nor can we argue that the question



whether there is a case to answer depends only on whether there is evidence irrespective of its credibility or weight sufficient to put the accused on his defense”

- ii. 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 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 defense”
 - iii. (Emphasis added)
- 3 Therefore the prosecution is mandated by law to prove the flowing elements of the offence of murder beyond reasonable doubt.
1. That the deceased is dead
 2. That the death was caused unlawfully
 3. That there was malice aforethought
 4. That the accused person directly or indirectly participated in the commission of the alleged offence.
4. The prosecution in this regard relied on the evidence of the four witnesses being PW1 Paul Ebenyo, Elaar Kuchal Gavin, Abdulahi Longech and No.112427 Etab Njehia. Thereafter the prosecution closed its case and in their closing remarks with the defence counsel each elected to leave matters to the court for determination without making any submissions. In the summary of the case, there is evidence that the deceased Andrew Kokiro died on 30th December, 2022 as confirmed by the post-mortem report dated 11th January, 2023 by Doctor Kidallio. There is no dispute as to the death of the deceased. The summary of the post-mortem report gives a connotation that before succumbing to death the deceased had suffered multiple injuries. Be that as it may be there is cogent evidence that the deceased may have been unlawfully assaulted before breathing his last breathe. That evidence inks the element of unlawfulness in the manner in which the deceased met his death. On malice aforethought the prosecution relied on the evidence of the four witnesses and the documentary evidence of the autopsy report produced as exhibit 6 and the government analysis report admitted as exhibit 5 (b).
5. The case of R – v – Galbraith set out the test for the court to consider when hearing an application for ‘no’ case to answer’, and it remains good law today. The submission has two limbs as follows:
- Either, that there is no evidence that a crime has been committed by the defendant; or that there is some evidence before the court, but it is tenuous or inconsistent in nature.
6. In those circumstances the Judge must consider whether the evidence, when taken at its highest, is such that the jury could not properly convict upon it. If the answer to that is yes, then the case should not be allowed to continue, and the Judge should dismiss it. In short, if despite giving the prosecution case the most generous of interpretations the case is still not strong enough to be capable of convincing a jury of guilt, then it should be dismissed
- “Prima facie” means on its face or at first glance. “ The prima facie definition originated in Latin where the term Prima translates to “foremost” or “first” and “facie” translates to “appearance.” Prima facie’s meaning emphasizes that something seems plausible, but is not necessarily true beyond all doubt. Thus one might say that there is prima facie evidence to support a hypothesis, meaning that the hypothesis is plausible, but might not hold up under further scrutiny.



7. When the accused is stated to be placed on his defence, he has to bear in mind Article 50 of the constitution on fair trial rights more specifically the right to remain silent and not to testify during the proceedings, the right to have adequate time and facilities to prepare her defence, to adduce and challenge evidence and the right to refuse to give self-incriminating evidence.
8. Having evaluated the evidence at the close of the prosecution case, I am convinced that if the accused person elect to remain silent there is a likelihood of sufficient evidence to hold him responsible for the death of the deceased. I therefore find that the prosecution has discharged the burden of proof of a prima facie case requiring the accused person to be put on his defence. In the premises pursuant to section 306 and 307 of the CPC I call upon the accused to exercise his rights under the constitution and criminal procedure code to offer evidence in rebuttal to the indictment. Orders accordingly.

DATED AND DELIVERED THIS 2ND DAY OF MAY, 2024

R. NYAKUNDI

JUDGE

And in the presence of;

Mr. Kakoi for the state

Mr. Karanja for the accused

