



**Republic v Arusei (Criminal Case E016 of 2022)
[2024] KEHC 7541 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7541 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E016 OF 2022
RE ABURILI, J
JUNE 19, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

DAVID ARUSEI ALIAS MOHAMMED ACCUSED

RULING

1. The accused person herein is David Arusei alias Mohammed. He 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 are that on the diverse dates between the 27th April 2022 and 30th April 2022 while at Milimani Estate, in Miwani Location within Muhoroni Sub-county in Kisumu County, the accused person murdered Julius Arusei.
3. The accused pleaded not Guilty to the charge and the prosecution has called 12 witnesses in support of its case and produced a postmortem Report as an exhibit.
4. The issue now for determination is whether the prosecution has established a *prima facie* case to warrant the accused to be placed on his defence.
5. A *prima facie* case is established in criminal cases where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict but for the right of the accused person to adduce and challenge that evidence, and the right to remain silent as well as the right not to give any self-incriminating evidence.
6. It follows that at this stage, the court cannot delve deep into the merits of the evidence adduced as to do so, where it is of the view that a *prima facie* case is established, might prejudice the accused person.
7. The defence counsel did request at the close of the prosecution’s case leave to file written submissions which have not been filed as at the time that I am writing this Ruling.



8. Having examined the evidence adduced by the 12 prosecution witnesses I am satisfied that a *prima facie* case has been established to warrant the accused person to be placed on his defence.
9. Accordingly, the accused person, David Arusei alias Mohammed is hereby found with a case to answer and is hereby placed on his defence.
10. The provisions of Article 50(2) (i) (j) (k) of the [Constitution](#) as read with Section 306(2) of the [Criminal Procedure Code](#) are read out and explained to the accused person in the presence of his counsel.
11. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 19TH DAY OF JUNE, 2024

R. E. ABURILI

JUDGE

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