



**Republic v Indenche & another (Criminal Case 47 of 2019)
[2024] KEHC 7026 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7026 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 47 OF 2019
HM NYAGA, J
JUNE 13, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

KIZITO INDENCHE 1ST ACCUSED

FRANCIS NDUNGU 2ND ACCUSED

RULING

1. The accused persons, Kizito Indenche & Francis Ndungu, were charged with Murder contrary to section 203 as read section 204 of the [Penal Code](#).
2. The Particulars were that on 15th September, 2019 at California area in Gigil Sub-County within Nakuru they jointly murdered Peter Kibathi.
3. On 31st October, 2019 the charges were read to the accused persons. They pleaded not guilty and thereafter the trial ensued with prosecution calling a total of six (6) witnesses in support of its case.
4. Upon the close of the prosecution case, neither the defence counsel nor the prosecutor presented any submissions.

Analysis & Determination

5. At this stage the court is to determine whether the prosecution has made out a prima facie case to require the accused persons to be put on their defence.
6. Under section 306(1) of the *Criminal Procedure Code*, when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is no evidence that the accused person committed the offence the court should, 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.
7. Under section 306(2) on the other hand, when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is evidence that the accused person committed the offence, the court should proceed to put the accused to his defence and inform him of his right to call evidence in support of his case.
 8. What then is a *prima facie* case? The test of this was settled in the case of *Ramanlal T. Bhatt v Republic* [1957] E.A. 332 where the court expressed itself 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, the case is merely one “which on full consideration might possibly 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 whether 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 is 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 tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”
 9. In *Republic v Abdi Ibrahim Owl* [2013] eKLR a *prima facie* case was defined as follows: -

“*Prima facie*” is a Latin word defined by Black’s Law Dictionary, 8th Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “*Prima facie* case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with.
 10. The court should therefore determine whether, based on the evidence placed before, it can convict the accused persons if they chose not to give any evidence, as they are entitled to by the law.
 11. There is a danger in making definitive findings at this stage, especially where the Court is of the view that there is a case to answer. This position was well described and appreciated by Trevelyan and Chesoni, JJ in *Festo Wandera Mukando v The Republic* [1980] KLR 103. The court held that;

“...We once more 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, in an extreme case, may require an appellate court to set aside an otherwise sound judgement. Where a submission of “no case” 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 count or counts concerned.”
 12. From the foregoing and without delving into the merits of the prosecution’s case it is my opinion that the prosecution has established a *prima facie* case to warrant the accused person being put on his defence, in terms of section 306 (2) of the *Criminal Procedure Code*.
 13. The accused person is to be informed of his rights under section 306(2) of the said Code.



DATED, SIGNED AND DELIVERED AT NAKURU THIS 13TH DAY OF JUNE, 2024.

.....

H. M. NYAGA

JUDGE

In the presence of;

C/A Jeniffer

Nancy for the state

Accused present

