



**Republic v Owuor & another (Criminal Case E008 of 2023)
[2024] KEHC 7189 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7189 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E008 OF 2023
RE ABURILI, J
JUNE 12, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

MAGDALENE ATIENO OWUOR 1ST ACCUSED

MATHA AWINO OTIENO 2ND ACCUSED

RULING

1. The accused persons Magdalene Atieno Owuor and Matha Awino Otieno are jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. Particulars of the offence as per Information dated 5th April 2023 are that on the 15th day of March, 2023 at around 2030hrs at Nyamasaria village, Kisumu East Sub-county, within Kisumu County, they jointly murdered Alga Akinyi.
3. The accused persons took plea on 17th April 2023 and they each denied committing the offence.
4. The prosecution has called 10 witnesses who have testified in support of its case.
5. The question now is whether the prosecution has established a *prima facie* case to warrant the accused persons to be placed on their defence.
6. 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.



In *Ramanlal Trambaklal Bhatt v. R* [1957] E.A 332 at 334 and 335, the court stated 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.”

7. The Court of Appeal similarly held in *Anthony Njue Njeru v Republic* [2006] eKLR that:

“Having expressed himself so conclusively we find it difficult to understand why the Learned Judge found it necessary to put the Appellant on his defence. Was there a *prima facie* Case to warrant the trial Court to call upon the Appellant to defend himself? It is a cardinal principle of law that, the onus is on the prosecution to prove its case beyond reasonable doubt and a *prima facie* case is not made out if at the close of the Prosecution case, the case is merely one, ‘Which on full consideration might possibly be thought sufficient to sustain a conviction’

Taking into account the evidence on record, what the Learned Judge said in his Ruling on no case to answer, the meaning of a *prima facie* Case as settled in *Bhatt’s Case*(supra), we are of the view that the Appellant should not have been called upon to defend himself as all the evidence was one record. It seems the Appellant was required to fill in the gaps in the Prosecution case.”

8. The question that I must deal with and answer at this stage is therefore, whether based on the evidence before this Court, the Court after properly directing its mind to the law and the evidence may, as opposed to will, convict if the accused chose to give no evidence. It was therefore held in *Ronald Nyaga Kiura v Republic* [2018] eKLR wherein paragraph 22 it is stated as follows:

“It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that a *prima facie* has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the *Criminal Procedure Code*. A *prima facie* case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person. This is well illustrated in the cited Court of Appeal case of *Ramanlal Bhat v Republic* [1957] EA 332. At that stage of the proceedings the trial court does not concern itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence.”



9. The *Oxford Companion of Law at pg 907* defines “*prima facie*” in the following terms:
- “A case which is sufficient to all an answer while *prima facie* evidence which is sufficient to establish a fact in the absence of any evidence to the contrary is not conclusive.”
10. That there is a danger in making definitive findings at this stage, especially where the Court finds that there is a case to answer is not farfetched and the reasons for not doing so are obvious. As was appreciated by Trevelyan and Chesoni, JJ in *Festo Wandera Mukando v The Republic* [1980] KLR 103:
- “...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.”
11. Having considered the evidence of the 10 prosecution witnesses and without delving deep into the merits thereof, as the accused persons right to be presumed innocent until the end of the trial is guaranteed, and that they have no obligation to prove their innocence, I am satisfied that the prosecution has established a *prima facie* case against the two (2) accused persons to warrant them to be placed on their defence.
12. Accordingly, I find that the two (2) accused persons have a case to answer and they are placed on their defence.
13. Article 50(2) (i) (k) (l) of *the Constitution* and Section 306(2) of the *Criminal Procedure Code* are read out and explained to both accused persons in Dholuo language in the presence of their advocate on record.
14. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 12TH DAY OF JUNE, 2024

R. E. ABURILI

JUDGE

