



**Republic v Boneh (Criminal Case 44 of 2020)
[2023] KEHC 1003 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1003 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 44 OF 2020
RN NYAKUNDI, J
FEBRUARY 10, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

BENARD BONEH ACCUSED

RULING

1. In the instance case Benard Boneh was charged with the murder of IRene Nelima Matuli contrary to section 203 as read with section 204 of the Penal Code. He pleaded not guilty to the charge putting the prosecution on notice to prove his guilty as provided for under article 52 (2) (A) of the constitution. In discharging that duty the prosecution summoned and tendered evidence from the testimonies of 3 (three) witnesses.

Resolution

2. At the close of the prosecution case Mr.Ombego counsel for the Accused Person moved a motion of no case to answer. On the other hand, Mr. Mugun prosecution counsel for the state, in his rejoinder urged the court to find an existence of a prima facie case to warrant the accused to be placed on his defence
3. A trial court under section 306(1) & (2) of the Criminal Procedure Code has a duty to proceed under the following guidelines given by the Supreme Court of Nigeria in *Debora vs The State* (1977) ALL NLR 146 where Udo Udoma JSC articulated that “ When a submission of no prima facie case is made on behalf of an accused person, the trial Court is not thereby called upon at that stage to express any opinion on the evidence before it. The court is only called upon to take note and to rule accordingly that there is before the court no legally admissible evidence linking the accused person with the commission of the offence with which he is charged. If the submission is based on discredited evidence, such discredit must be apparent on the face of the record. If such is not the case, then the submission is bound to fail.”



4. Similarly "It has been held that a submission of no case to answer postulates one or two or both of the following; it postulates that throughout the trial, no legally admissible evidence at all was led against the accused person linking him in any way with the commission of the offence with which he was being charged, necessitating his being called upon to answer, and that whatever evidence there was which could have linked the accused with the commission of the offence, has been so discredited by cross examination that no reasonable tribunal or court can act on it in convicting the accused person. See *Tongo vs. COP* (supra) per Oguntade. See also *Suberu vs. The State* (supra). The appellant opined that from the totality of the evidence adduced by the prosecution a prima facie case has not been disclosed against the accused person, and more over that the trial court did not evaluate the evidence adduced before arriving at its decision. The lower court in its ruling at pages 86 - 88 identified the principles governing a no case submission, and ruled that upon a careful consideration of the evidence before it and the exhibits tendered, a prima facie case has been made out against the appellant requiring him to render explanations thereto. From the state of the law, the position of the appellant's counsel delving into a full consideration of the evidence and according credibility and weight thereto, becomes premature and therefore not a requirement of the law. The case of *Ubanatu vs. The State* (supra), settles the point, as it is unnecessary at that stage considering if the evidence was sufficient to ground a conviction. The requirement at that stage is whether a prima facie case has been made warranting the accused being called upon to explain. The evidence of the PW1 is at pages 58 - 63, while Pw2 gave evidence and was recorded at pages 63 - 68 of the record. The Apex Court in the consideration of what amounts to a prima facie case, held that the term simply means that "there is a ground for proceeding" it envisages the evidence which if uncontradicted, and if believed would be sufficient to prove the case against the accused: *Milton P. Obwovoriote, San Vs. Frn* (2003) LPELR - 2364 (SC)."Per BARKA, J.C.A. (Pp. 16-18, Paras. B-A) - read in context"
5. In law evidence which establishes existence or non-existence of a fact in issue may be inferred from either direct or circumstantial admitted by the court. In the process of appraisal and scrutiny of the legal evidential burden cast upon the prosecution I am satisfied that a prima facie case has been made out under section 1071 and 108 of the [Evidence Act](#) to place the accused on his defence as provided for in section 307 of the [Criminal Procedure Code](#).

It is so ordered

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 10TH DAY OF FEBRUARY 2023

In the Presence of: Mugun for the State

Mr.Ombego for the Accused

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R. NYAKUNDI

JUDGE

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