



**Republic v Saiya & another (Criminal Case 48 of 2018)  
[2023] KEHC 18147 (KLR) (5 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18147 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL CASE 48 OF 2018  
RN NYAKUNDI, J  
JUNE 5, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ISAIAH MAWABA SAIYA ..... 1<sup>ST</sup> ACCUSED**

**JAMES WEKESA ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. Both accused herein Isaiah Mawaba Saiya and James Wekesa were charged jointly with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars are that on July 17, 2018 at Bondeni area in Eldoret West Sub-County within Uasin Gishu County, jointly murdered Dennis Omdeke.
2. The accused pleaded not guilty to the charge. They were represented at the trial by Mr Oyaro advocate and the prosecution was conducted by Mr. Mugun, Prosecution Counsel. The prosecution called a total of six (6) witnesses.
3. At the close of the prosecution case the defence counsel Mr Oyaro in compliance with section 306 (1) of the *Criminal Procedure Code* made a submission of a no case to answer in favour of the accused persons.

**Determination**

4. The main issue for determination in this trial at half time submission is whether the accused has a case to answer on the charge of murder. The burden of proof of beyond reasonable doubt to prove the ingredients of the offence which comprise of the following rests with the prosecution throughout the trial.
  - a That the deceased is dead.



- b That his death was due to an unlawful act by the accused
  - c That in killing the deceased accused had malice aforethought
  - d That it is beyond per adventure the deceased death was caused by the accused.
5. It was expected of the prosecution to discharge a wholesome burden as envisaged in section 107 (1) of the *Evidence Act* which states that; -
- 1 Whoever desires any Court to give judgement as to any legal right or liability is dependant on the existence of facts which he asserts must prove those facts exist.
  - 2 When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
6. It is trite as expressly stated in the cases of State vs Ramadhan Chin Shue HCA No 104 of 1997 and *Sanjib Chaittal v The State* [1985] 39 WLR Bhatt V [1957] EA 332 that; -
- “A submission that there is no case to answer may properly be made and upheld (a) when there has been no evidence adduced by the prosecution to prove essential elements in the alleged offence (b)With the evidence adduced by the provision has been so discredited that no reasonable tribunal could safely convict on it.”
7. In addition, in the case of *Uganda v Mulwa Aramathan* Criminal Case No 103 of 2008 the Court stated that; -
- “A *prima facie* case does not mean a case proved beyond any reasonable doubt since at this stage, Court has not heard the evidence for the defence.”
8. I have considered the prosecution evidence on record and the submissions on no case to answer. At this stage, the court is not expected to make any finding on the guilt of the accused person but to assess the evidence and determine whether the accused persons, on the material placed before the court should be called upon to give their defence to the charge. This is so because giving reasons for a finding that an accused person has a case to answer would be prejudicial to an accused person, hence such a determination if arrived at must be made without giving reasons. 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 case 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. However, having considered the evidence as adduced by all the prosecution witnesses and as a whole, I am satisfied that the prosecution has established a prima facie case against the two accused persons to



warrant them be placed on their defence. As to whether the said evidence on record meet the threshold for convicting the accused persons is a matter that will have to be considered at the end of the trial. It is trite that a prima facie case is distinguishable with that of a motion of no case to answer as stated in the practice note of (1962)1 ALL ER thus “a submission that there is no case to answer may properly be made and upheld.

- a. When there has been no evidence to prove an essential element in the alleged offence.
  - b. When the evidence adduced by the prosecution has been discredited as a result of cross examination or is so manifestly unreasonable that no reasonable tribunal could safely convict on it”
10. Referring to the hallmarks of these doctrines the court has attached particular importance to the discharge of the burden of proof by the prosecution on a prima facie case. That means the accused person motion of no case to answer fails.
11. Accordingly, I order that the accused persons Isaiah Mawaba Saiya and James Wekesa shall tender their defence(s) in this case. The provision of Section 306 (2) and (3) of the *Criminal Procedure Code* is hereby complied with by calling upon the accused persons to elect what mode of defence they wish to tender before the court.

It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF JUNE 2023**

**In the presence of:**

**Accused person**

**Mr Mugun for the state**

.....

**R. NYAKUNDI**

**JUDGE**

