



REPUBLIC OF KENYA



**Republic v Tiyot & 2 others (Criminal Case E008 of 2021)
[2023] KEHC 18119 (KLR) (5 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18119 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E008 OF 2021
RN NYAKUNDI, J
JUNE 5, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

DAVID KIPKEMOI TIYOT 1ST ACCUSED

TITUS KORIR BIWOTT 2ND ACCUSED

HILLARY KIPKORIRI KIPKORIR 3RD ACCUSED

RULING

1. The accused persons were charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on the January 3, 2021 at Kapchoge village, Kararia Sub Location Marakwet East sub county within Elgeyo Marakwet county, jointly with others not before the court murdered one Gilbert Kiptoo Ruto.
2. The accused persons pleaded not guilty and the prosecution called three witnesses in support of its case.
3. What is pending at this stage is a determination on whether the accused persons have a case to answer. 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] EA 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.”

4. Having considered the material placed before me I am satisfied that the prosecution has established a *prima facie* case for the purposes of a finding that the accused persons have a case to answer. 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.
5. In arriving at a decision pursuant to section 306(1) as read with sub section 2 of the [Criminal Procedure Code](#) the court is guided by the approach described by Lord Lane in [R v Galbraith](#) [1981] 1 WLR 1039 where he said :
6. If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.
 - (2) The difficulty arises where there is some evidence but it is of a tenuous nature for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.
 - (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’s reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty then the judge should allow the matter to be tried by the jury. There will of course, as always in this branch of the law be borderline cases. They can safely be left to the discretion to the judge”.
7. Applying the qualitative and quantitative backdrop of the prosecution case and the test laid down in the above cases I am convinced that the evidence of PW1 –PW3 testimonies summoned in support of the charge lean more substantially towards a prima facie case as against the accused persons. As a consequence, each of them is hereby placed on his defence as expressly provided for in section 306 (2) as read with 307 of the [Criminal Procedure Code](#).

It is so ordered.

DELIVERED, DATED AND SIGNED ON THIS 5TH DAY OF JUNE 2023

In the Presence of:



Accused person present

Mr. Mugun for the State

.....

R. NYAKUNDI

JUDGE

