



REPUBLIC OF KENYA



**Republic v Yegon (Criminal Case 1 of 2017)
[2023] KEHC 22863 (KLR) (25 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22863 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 1 OF 2017
RL KORIR, J
SEPTEMBER 25, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

EDISON KIPKORIR YEGON ACCUSED

RULING

1. Edison Kipkorir Yegon (Accused) is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code, Cap 63 Laws of Kenya. The particulars of the offence were that on the 31st day of December, 2016 at Youth farmers trading centre in Cheboin Location within Bomet County with malice aforethought murdered Bernard Cheruiyot.
2. The Accused took plea before Muya J on February 1, 2017 and denied the charge. The case went into full trial in which the Prosecution presented 8 witnesses. All the witnesses except the last one testified before Muya J. while I heard the last prosecution witness.
3. At the close of the case, either the prosecution nor the defence filed any submissions on case of no case to answer. Section 306 of the Criminal Procedure however requires the Court to make a ruling on whether or not the evidence tendered by the Prosecution discloses a *prima facie* case against the Accused.
4. A prima facie case was defined in the case of Republic Vs Abdi Ibrahim Owl [2013] eKLR 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 rebuttal presumption that an accused person is guilty of the offence he/she is charged with. In Ramanlal Trambaklall



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 but if, at the close of the prosecution, the case is merely 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 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.”

5. At this point of the trial, this Court is not required to give a well-reasoned decision as to the guilt or innocence of the Accused person. That is preserve of the judgement that will be eventually rendered at the close of the defence case should this Court find that he has a case to answer. I share the reasoning of Ojwang J. (as he then was) in *Republic vs Karanja Kiria*, Criminal Case Number 13 of 2004, NAIROBI (2009) eKLR where his Lordship stated thus: -

“The question at this stage is not whether or not the accused is guilty as charged but whether there is such cogent evidence of his connection with the circumstances in which the killing of the deceased occurred, that the concept of *prima facie* case dictates as a matter of law that an opportunity be created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled...

The Court of Appeal Criminal Appeal No 77 of 2006, the Court of Appeal expressed that too detailed analysis of evidence, at no case to answer stage is undesirable if the court is going to put the accused onto his defence as too much details in the trial court’s ruling could then compromise the evidentiary quality of the defence to be mounted.”

See also [Anthony Njue Neru Vs Republic](#), Criminal Appeal No 77 of 2006 eKLR.

6. In this case, I have carefully considered the evidence on record including the exhibits tendered. From my analysis of the evidence, it is my finding that the Prosecution has established a *prima facie* case against the Accused. He is called upon to make his defence in accordance with Section 306 of the [Criminal Procedure Code](#).

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 25TH DAY OF SEPTEMBER, 2023.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Accused, Mr. Njeru for the State, Mr. Leteipa holding brief for Mr. Kipngetch for the Accused and Siele (Court Assistant)

