



**Republic v Ogolla (Criminal Case E009 of 2022)
[2023] KEHC 22793 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22793 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CRIMINAL CASE E009 OF 2022
RPV WENDOH, J
SEPTEMBER 21, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

FELIX ONYANGO OGOLLA ACCUSED

RULING

1. Felix Onyango Ogolla, faces a charge of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The particulars of the charge are that on May 12, 2022, at Mitwe village, Rongo Sub County, murdered Jayden Castro.
3. The accused denied the charge and the case proceeded to full trial with the prosecution calling a total of six witnesses.
4. The question is whether the prosecution has established a prima facie case against the accused for him to defend himself. The term ‘prima facie’ case is defined in the case of in Oxford Companion of Law at page 97 as “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.”
5. In the case of *Ramanlal Trambaklal Bhatt vs. R* (1975) EA 322 at a page 334, 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.”

6. In *Abdi Ibrahim Owl* (2013) eKLR, the court also defined prima facie as:-

“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 rebuttable presumption that an accused person is guilty of the offence he/she is charged with.”

7. In the instant case, the prosecution called a total of six (6) witnesses. PW1 Pamela Akinyi Ogola is the mother of the Accused. She told the court that the deceased who was aged about 2 years was the son of Nancy who had been married to her son the Accused; that the child did not belong to Accused. On May 12, 2022, she had been at work then at school and on her way home, heard screams, found people in her home crying. She found the deceased in the kitchen, dead. Later, the Assistant Chief and police came and took away the body. She denied seeing injuries on the deceased’s body except a fracture which the deceased had sustained earlier on.
8. PW2 Mary Akeyo, Assistant Chief of Kanyamamba Sub location recalled the May 12, 2022 when at Ngara Health Centre, he was informed that a boy had died at Ogola’s home. She proceeded to the scene, found the deceased in the kitchen and he had bruises to the forehead, stomach, shoulder and the legs were swollen and members of public had detained Mary, the mother to deceased and the Accused. She called the OCS Kamagambo police station to come for the body and the suspects.
9. PW3 Dan Oyugi Otado an uncle to Accused, recalled May 23, 2022 when he attended a post mortem at Rosewood Mortuary Rongo and identified the body of Jayden to the doctor.
10. PW4 CPL Leonard Pamba, the investigating officer in the case recalled the 12/5/2022, He was asked to join the DCIO to proceed to a murder scene where they found the body of a child in accused’s house. They arrested both parents Accused and one Nancy Atieno; that the body had bruises all over the body. He began investigations and released Nancy, the mother of the child leaving Accused as the key murder suspect as it was alleged that Nancy had left the child with Accused but found the child dead upon return and that at post mortem, It was confirmed that the child had died from strangulation.
11. PW5 Dr. Morebu conducted the post mortem on the deceased and found that there was haematoma on the anterior neck, scratch marks on the anterior wall, the trachea was crushed, there was blood in the chest (haemothorax) bruises to the groin, and he formed the opinion that the child died due to asphyxia as a result of lack of oxygen.
12. PW6 Mary Adoyo Odongo a relative to Accused narrated that accused and Nancy lived near her place of business and on May 12, 2022, about 9:00a.m Nancy, mother to deceased called her to go to her house and see something. She went and found Nancy and the child on the bed and was sick. She observed the child and noticed the body swollen all over. By then, Accused was not present. She instructed Nancy to dress up so that they could take the child to hospital but was called to attend to



some business and she did not know whether the child was taken to hospital. Later in the day, she heard that the child had died.

13. Having considered the evidence on record, I find that there is no direct or circumstantial evidence linking Accused to the death of the deceased. Nancy, the mother of the deceased who was also arrested and later released did not testify before this court because after release on bond, she has vanished. She was a prime suspect and it is not very clear how she was released only to disappear after that. By her disappearance, it makes it clear that she knew about the deceased's death and she is also a prime suspect of the said murder.
14. So far, there is no evidence linking Accused to the murder of the deceased. Mere suspicion however strong, cannot form the basis of a conviction. Accused is a prime suspect but even if the court placed him on his defence and he keeps quiet in his defence this court would still acquit him. The court has no option but releases Accused at this stage for lack of evidence connecting him to the murder. In the end I find that the prosecution has not established a prima facie case against the Accused for him to be placed in his defence. He is hereby acquitted of the charge of murder under Section 306 (1) *Criminal Procedure Code*.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 21ST DAY OF SEPTEMBER, 2023

R. WENDOH

JUDGE

Ruling delivered in the presence of

Mr. Kaino for the State

Ms. Okota for Accused

Accused present

Emma/ Felix Court Assistant

