



**Republic v Noor (Criminal Case 56 of 2016)
[2024] KEHC 17003 (KLR) (25 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 17003 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 56 OF 2016
DO CHEPKWONY, J
OCTOBER 25, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

AHMED ALI NOOR ACCUSED

RULING

1. The Accused person, Ahmed Ali Noor, is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).

The particulars of offence are that:-

“On 26th May, 2013 at Gatwanyanga Village in Thika East within Kiambu County, the accused murdered Arthur Gathathu”.

2. On 27th May, 2013, the accused person was arraigned in court whereby he was informed of the charge against him but he was not required to say anything until such time as he will have been examined as to his mental capacity and assigned legal representation. On 11th June, 2013, it was confirmed that the accused had been examined and found fit to stand trial and also been assigned legal representation. The charge was read over and full information explained to the accused in Kiswahili language which he understands and he pleaded ‘Not Guilty’ to the offence of Murder. The trial commenced on 23rd January, 2017 whereby the prosecution called eleven (11) witnesses being Gabriel Kamau (PW1), John Ngaruiya Njoroge (PW2), Francis Nyoike Karanja (PW3), Kamau Gathagu (PW4), No. 8XXXXXXX David Kibara Kabiru (PW5), No. 2XXXXXX SNR SGT David Kiprono Ngeno (PW6), No. 78316 CPL Eric Mugendi (PW7), Raphael Chege Mundia (PW8), Dr. Eunice Mugweru (PW9), Inspector Ruben Kiptum Bett (PW10) and Alphonse Gituku Mbulu (PW11) in support of its case.



3. This Ruling is in respect to whether, from the evidence adduced by the said prosecution's witnesses, the accused has a case to answer or not. It is important to start with the definition of what amounts to a *prima facie* case which was defined by the Court in the case of [Republic v 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 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. The procedure of determining whether the accused has a case to answer should ensure that the details of evidence should not be so lengthy to avoid compromising the quality of evidence that the defence will mount. This was discussed in the case of [Republic v Stephen Chomba Kamau](#) (2021) eKLR stated:-

“*Republic v Samuel Karanja Kiria* (2009) eKLR Justice J.B Ojwang (as he then was) stated:-

“The question at this stage is not whether or not the accused is guilty as charged but whether there is cogent evidence of his connection with the circumstances in which killing of deceased occurred. That the concept of *prima facie* case dictates as a matter of law that an opportunity 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 in Criminal Appeal No. 77/2006 expressed that too detailed analysis of evidence stage at no case to answer stage is undesirable it the court is going to put accused on his defence as too much details in the trial court's ruling could then compromise the evidentiary quality of the defence to be mounted.” Emphasis added.



5. The court has considered the evidence of all the eleven (11) prosecution witnesses but opts to refrain from delving into the testimonies of each of the witnesses so as to avoid compromising the evidence to be adduced by the accused in his defence.
6. Having considered the evidence of all the eleven (11) prosecution witnesses, the Court is satisfied that the prosecution has established a *prima facie* case to warrant the finding that the accused person has a case to answer and he is consequently placed on his defence as per the provisions of Section 210 of the [Criminal Procedure Code](#).

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 25TH DAY OF OCTOBER, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:-

M/S Ndeda counsel for the State

Mr. Munene counsel for accused

Court Assistant - Martin

