



**Republic v Nyaga ‘alias’ Samow (Criminal Case E008 of 2023)
[2024] KEHC 12460 (KLR) (16 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12460 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E008 OF 2023
JN ONYIEGO, J
OCTOBER 16, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ANTHONY MURITHI NYAGA ‘ALIAS’ SAMOW ACCUSED

RULING

1. The accused person is facing a charge of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on 23.05.2023 at Wangai Dahan Location in Mandera West sub Location within Mandera County, he murdered Hassan Salat Mohamed.
2. He was arraigned before court and upon the charges being read to him, he pleaded not guilty hence a plea of not guilty entered.
3. The matter proceeded to hearing with the prosecution calling a total of eleven (11) witnesses in order to prove its case.
4. It is trite that by virtue of section 306 of the Criminal Procedure Code, a court has a legal duty, upon close of the prosecution’s case, to make a ruling or a decision on whether an accused person has a case to answer or not. Under Section 306(1), when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is no evidence that the accused or any one of several accused persons committed the offence, should, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.
5. Under section 306(2), when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is evidence that the accused person or any one or more of several accused persons committed the offence, the court should proceed to put the accused to his/ their defence and in such a circumstance, the accused is supposed to present evidence in defence.



6. As such, at this stage, this court's role is to consider the evidence on record and make a determination as to whether the same presents a prima facie case that would warrant this court to call upon the accused to give his defence. In the case of Ronald Nyaga Kiura vs Republic [2018] eKLR, the court stated as follows (in relation to a prima facie case); -

“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 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.

7. However, it is trite that, where the court is not acquitting the accused person at the close of prosecutions' case, there is no need for a reasoned ruling for a case to answer. Reasons should only be given where the submissions of a no case to answer by the accused are upheld and the accused is to be acquitted. [See R vs Kevin Owuoth Abith alias Opudo [2022] eKLR].

8. I have considered the evidence tendered by the prosecution in support of its case. From the entirety of the said evidence, it is my view that the prosecution has made up a prima facie case against the accused person thus requiring him to be placed on his defence to give his side of the story. The accused person herein therefore has a case to answer and is hereby placed on his defence. He is accordingly informed of his rights under section 211 of the CPC.

9. He has a right to give sworn testimony in which case he will be subjected to cross examination. Second option is that he can opt to take unsworn testimony in which case he will not be subjected to cross examination by the prosecution. Lastly, he can opt to keep quiet. In any of the three options, he will be at liberty to call a witness or witnesses if he wishes.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 16TH DAY OF OCTOBER 2024

J. N. ONYIEGO

JUDGE

