



**Republic v Waswa alias Junior (Criminal Case E015 of 2022)
[2024] KEHC 11988 (KLR) (7 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11988 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E015 OF 2022**

DK KEMEL, J

OCTOBER 7, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

DANIEL WAFULA WASWA ALIAS JUNIOR ACCUSED

RULING

1. The accused herein Daniel Wafula Waswa alias Junior is charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). Particulars of the offence as per the information dated 14th March 2022 is that on 12th February 2022 at Sanandiki Village, Chwele Location in Bungoma Central Sub-County within Bungoma County, he murdered Difas Wanyonyi.
2. The accused took plea on 14th March 2022 denying the offence and thus the case was set down for hearing. The Prosecution have so far tendered evidence by calling six (6) witnesses and the question now at this stage, for this Court, is to determine whether the Prosecution has established a *prima facie* case against the accused to warrant him to be placed on his defence.
3. The burden of proof lies on the Prosecution throughout the trial. That burden of proof does not shift to the accused to prove his innocence. That is the only way fair trial of the accused can be guaranteed as stipulated in Article 50 (2) of the [Constitution](#).
4. It follows that the accused is under no duty to give any evidence in defence to rebut the Prosecution's case. The accused herein has the right to remain silent and that the Court would decide the case on the basis of the evidence adduced, without making any adverse inference against him.
5. However, the accused's right to adduce evidence and challenge the evidence adduced against him is guaranteed under Article 50 (2) (k) of the [Constitution](#), albeit that he also enjoys the right not to give any self-incriminating evidence. See Article 50 (2) (l) of the [Constitution](#).



6. Having said so, the standard of proof required in criminal cases is that of beyond reasonable doubt. Nonetheless, as earlier stated, that standard is not applicable at this stage where the Prosecution is only expected to have established a *prima facie* case against the accused to warrant him to be placed on his defence.
7. A *prima facie* case is established where the evidence tendered by the Prosecution is sufficient on its own for a Court of law to return a guilty verdict even if the accused opts to remain silent.
8. Under Section 306 (1) of the [Criminal Procedure Code](#):

“When the evidence of the witnesses for the Prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of the several or any one of the several accused committed the offence shall, 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.”
9. Having considered the testimonies of the six (6) Prosecution witnesses, the question is whether the evidence tendered establishes a *prima facie* case against the accused, or whether the accused has a case to answer.
10. In [Republic v Abdi Ibrahim Owi](#) [2013] eKLR, the Court defined a *prima facie* case as follows:

“‘prima facie’ is a Latin word defined by Black’s Law Dictionary 8th Edition as, “sufficient to establish a fact or raise presumption unless disapproved or rebutted”. ‘prima facie’ is defined by the same dictionary as “the establishment of a legally required rebuttable presumption.”
11. In simple terms, *prima facie* means the establishment of a rebuttable presumption that an accused is guilty of the offence he/she is charged with. In [Ramanlal Trambaklal Bhatt v R](#) [1957] E.A 332 at 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’s case, the case is merely one in which on full consideration might possible be thought sufficient to sustain a conviction.”
12. 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, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”
13. From the foregoing authorities, can this Court on the basis of the evidence so far tendered by the Prosecution, and this Court properly directing itself to the law and evidence convict if the accused choose not to give any evidence?
14. In [Ronald Nyaga Kiura v Republic](#) [2018] eKLR, the Court held:

“It is important to note that at the close of the Prosecution, what is required in law at this stage is for the trial court to satisfy itself that a *prima facie* case 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](#)...”
15. The trial Court is however cautioned that at this stage, it should not make definitive findings should it conclude that the accused has a case to answer.



16. In *Festo Wandera Mukando v Republic* [1980] KLR 103, the Court held:

“...we draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgment. Where a submission of “no case” to answer is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the court or courts concerned.”

17. Having considered the evidence of the six (6) Prosecution witnesses, and without delving deep into the merits of that evidence as that would prejudice the accused herein, I am satisfied that a prima facie case has been established against the accused herein to warrant him to be placed on his defence. It is instructive that the deceased had visited the accused’s wife on the material date and that the accused was not amused by the alleged visit by the deceased and that he is the one who raised alarm attracting members of public to the scene. Hence, the accused was placed at the scene of crime and must now offer an explanation as to how the deceased met his death.

18. Accordingly, I find that the prosecution has established a prima facie case against the accused herein Daniel Wafula Waswaalias Junior. I find that he has a case to answer and is now called upon to elect to conduct his defence in line with the provisions of section 306(2) of the *Criminal Procedure Code*.

DATED AND DELIVERED AT BUNGOMA THIS 7TH DAY OF OCTOBER 2024.

D. KEMEI

JUDGE

