



**Republic v Simiyu & another (Criminal Case E015 of 2022)  
[2024] KEHC 11746 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11746 (KLR)

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

**DK KEMEL, J**

**OCTOBER 4, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**PAUL MUROBOTI SIMIYU ..... 1<sup>ST</sup> ACCUSED**

**MAURICE MASINDE MALOBA ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The accused persons herein Paul Muroboti Simiyu And Maurice Masinde Maloba are 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 9<sup>th</sup> June 2022 are that on 3<sup>rd</sup> May 2020 at Chenjeni Village, Sichei Sub-Location in Bungoma Central Sub-County within Bungoma County, they, jointly with others not before Court, murdered Jack Wanjala Wekesa.
2. The accused persons took plea on 9<sup>th</sup> June 2022 denying the offence and that the case was set down for hearing. The Prosecution have so far tendered evidence by calling eleven (11) 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 persons to warrant them to be placed on their defence.
3. The burden of proof lies on the prosecution throughout the trial. That burden of proof does not shift to the accused persons to prove their innocence. That is the only way fair trial of the accused persons can be guaranteed as stipulated in Article 50 (2) of the Constitution.
4. It follows that the accused persons are under no duty to give any evidence in defence to rebut the prosecution’s case. The accused persons herein have 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 them.



5. However, the accused persons' right to adduce evidence and challenge the evidence adduced against them is guaranteed under Article 50 (2) (k) of the *Constitution*, albeit that they also enjoy 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 persons to warrant them to be placed on their 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 persons opt to remain silent in defence.
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 eleven (11) Prosecution witnesses, the question is whether the evidence tendered establishes a prima facie case against the accused persons, or whether the accused persons have 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 person 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 tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”
13. From the aforesaid 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 persons 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. This Court is however cautioned that at this stage, it should not make definitive findings should it conclude that the accused persons have 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, and 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 count or counts concerned.”
17. Having considered the evidence of the eleven (11) Prosecution witnesses, and without delving deep into the merits of that evidence as that would prejudice the accused persons herein, iam satisfied that a prima facie case has been established against the accused persons to warrant them to be placed on their defence. Both accused persons herein were 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 Paul Muroboti Simiyu And Maurice Masinde Maloba have a case to answer and they are placed on their defence. They are now called upon to elect to conduct their defence in line with the provisions of section 306(2) of the *Criminal Procedure Code*.

Orders accordingly.

**DATED AND DELIVERED AT BUNGOMA THIS 4<sup>TH</sup> DAY OF OCTOBER, 2024.**

**D. KEMEI**

**JUDGE**

In the presence of:

Paul Maroboti Simiyu 1<sup>st</sup> Accused

Maurice Masinde Maloba 2<sup>nd</sup> Accused

Wanjala Makokha for both Accused

Miss Mwaniki for Prosecution

Kizito Court Assistant

