



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kimwele (Criminal Case E012 of 2022)
[2024] KEHC 13765 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E012 OF 2022
JN ONYIEGO, J
NOVEMBER 7, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JAMES KALONZO KIMWELE ACCUSED

RULING

1. The accused person is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence are that on 22.06.2022 at Boji area within Madogo Location, Tana River County he murdered Fundi Kalonzo.
2. The accused person took plea on 06.07.2022 denying the offence and the case was set down for hearing.
3. The prosecution tendered evidence by calling nine (9) witnesses. The question for this court to answer at this stage is whether the prosecution has established a *prima facie* case against the accused person to warrant him being placed on his defence?
4. It is trite that the burden of proof lies on the prosecution throughout the trial and the same does not shift to an accused person. [*Public Prosecutor v Saimin & Ors* [1971] 2 MLJ 16].
5. 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...”



6. 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 accused persons 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.”

7. 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. In the case of *May v O’Sullivan* [1955] 92 CLR 654, the court held that:

“When at the close of the case for the prosecution a submission is made that there is no case to answer, the question to be decided is not whether on the evidence as it stands the defendant ought to be convicted, but whether on the evidence as it stands he could lawfully be convicted. This is a really question of law.”

8. Having considered the evidence of the prosecution witnesses, and without delving deep into the merits of that evidence as that would prejudice the accused person herein, I am satisfied that a *prima facie* case has been established against the accused person to warrant him being placed on his defence. To that extent, accused is put on his defence. Section 211 of the *CPC* is accordingly explained to him to elect on whether to make sworn or unsworn testimony or opt to keep quiet. He is at liberty to call witnesses.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF NOVEMBER 2024

J. N. ONYIEGO

JUDGE

