



**Director of Public Prosecution v Liabule (Criminal Case E094 of 2021)
[2024] KEHC 16405 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E094 OF 2021
S MBUNGI, J
DECEMBER 17, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION REPUBLIC

AND

AMELIA JACOBETH LIABULE ACCUSED

RULING

1. The accused person herein Amelia Jacobeth Liabule is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 Laws of Kenya.
2. The Particulars of the offence as per the information dated 1st February, 2021 are that on the 12th day of January, 2021 at Shisende Village, Mutaho sub-location, Kakamega South sub-county within Kakamega County, the accused person murdered Bernadinah Nabwangu.
3. The accused person took plea on 1st February, 2021 denying the offence and the case was set down for hearing.
4. The Prosecution have so far tendered evidence by calling nine (9) witnesses and in this ruling, this court is tasked under Section 306 of the Criminal Procedure Code, with making a ruling on whether or not the accused person has a case to answer and whether the prosecution has established a prima facie case. The provision states:

“Close of case for prosecution

- (1) 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 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.



- (2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.
 - (3) If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or 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 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.”
5. 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.
6. 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.”
7. The burden of proof lies on the prosecution throughout the trial. That burden of proof does not shift to the accused person to prove his innocence. That is the only way fair trial of the accused person can be guaranteed as stipulated in Article 50 (2) of *the Constitution*.
8. It follows that an accused person is under no duty to give any evidence in defence to rebut the prosecution’s case. An accused person has the right to remain silent and the court would decide the case on the basis of the evidence adduced, without making any adverse inference against him.
9. The counsel for the accused submitted that the prosecution failed to prove the offence of murder in accordance with section 203 of the penal code. It is not contested that the deceased is dead. PW4 undertook the post mortem and confirmed the death. However, the learned counsel submitted that the prosecution has not tendered any evidence that the murder was committed by the accused person as there was no eye witness to the murder and none of the witnesses called by the prosecution could testify as to what happened since all of them were after the event witnesses. Further, the counsel avers that DNA analysis conducted by PW6 and PW8 who are government chemists do not link the accused to the murder.
10. In rebuttal, the prosecution counsel submitted that all the ingredients of the offence of murder contrary to section 203 and read with section 204 of the penal code had been proved by the prosecution. He submitted that the death was caused by an unlawful act since the government pathologist opined that the death was caused by a penetrating head injury following assault. He further



submitted that the prosecution relied on the principle of last seen, since the accused was the last one to interact with the deceased before her death. Further, the accused fled the scene and booked a bus to Nairobi. She was also found carrying clothes, some of which appeared to be blood stained and matched the deceased's DNA.

11. The standard of proof required in criminal cases is that of beyond reasonable doubt. Nonetheless, that standard is not applicable at this stage where the prosecution is only expected to have established a prima facie case against the accused person to warrant him to be placed on his defence.
12. 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.
13. In *Festo Wandera Mukando v Republic* [1980] KLR 103, the court as follows:

“...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.”

14. Having considered the material placed before me I am satisfied that the prosecution has established a prima facie case for the purposes of a finding that the accused has a case to answer. As to whether the said evidence on record meet the threshold for convicting the accused is a matter that will have to be considered at the end of the trial.
15. I accordingly place the accused on her defence.
16. Right of appeal 14 days explained.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 17TH DAY OF DECEMBER, 2024.

S.N MBUNGI

JUDGE

In the presence of :

Accused person – present

Ms. Kadenyi Advocate for the accused - present

Court Prosecutor – Mbonzo present

Court Assistant – Elizabeth Angong'a

