



**Republic v Kebiro (Criminal Case E025 of 2021)
[2024] KEHC 15440 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15440 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL CASE E025 OF 2021
WA OKWANY, J
DECEMBER 5, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ERICK ONSINYO KEBIRO ACCUSED

RULING

1. The Accused herein, Erick Onsinyo Kebiro, was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge were that on the night of the 4th September 2021 at Bokariang’a village, Charachani Sub-location, Keerra Location in Nyamira South Sub-County within Nyamira County, jointly with others not before the Court, the accused person murdered Kepha Ombachi Ochengo.
2. The accused pleaded not guilty to the offence and the case was thereafter set down for hearing. The Prosecution presented the evidence of 3 witnesses and the question that this court has to determine, at this stage, is whether the prosecution has established a prima facie case against the accused person to warrant him to be placed on his defence.
3. It is trite that 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. This is the only way fair trial of the accused person can be guaranteed as stipulated in Article 50 (2) of *the Constitution*.
4. It thus follows that an accused person is not under any obligation to tender any evidence in defence to rebut the prosecution’s case. Indeed, an accused person has the right to remain silent and allow the court to decide the case on the basis of the evidence adduced, by the Prosecution, without making any adverse inference against him.



5. Needless to say, the standard of proof required in criminal cases is that of beyond reasonable doubt. However, this 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.
6. 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.
7. Section 306 (1) of the Criminal Procedure Code stipulates as follows:-

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.

8. I have considered the testimonies of the three (3) prosecution witnesses, and my next task is to determine if the evidence establishes a prima facie case against the accused, or whether the accused has a case to answer.

9. 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.”

10. In the oft-cited case of Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335, the court set out the test of what constitutes a prima facie case 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, the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction.” This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence”. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence...It is 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.”

11. The test was also discussed in Republic v Galbraith [1981] WLR 1039 as follows: -

“(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence, but it is of a tenuous character, for example because of interment weakness or vagueness or because it is inconsistent with other evidence:

(a) where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed



could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

- (b) where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witnesses' reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

12. Applying the test laid down in the above cited cases to the instant case, and without delving into the merits of the evidence presented by the three Prosecution witnesses in a manner 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 to be placed on his defence.

13. It is to be noted that the Court is not required to delve into the substance of the case to determine whether the Accused is guilty or not. The court is merely required to establish whether there exists a rebuttable presumption of guilt. I am guided by the decision in Festo Wandera Mukando vs. The Republic [1980] KLR 103 where the court held thus: -

"...we once more 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 judgement. Where a submission of "no case" 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."

14. For the above reasons, I find that Erick Onsinyo Kebiro has a case to answer and he is placed on his defence. His rights under Article 50 (2) (i) (k) and (l) of *the Constitution* as read with Section 306 (2) of the Criminal Procedure Code are guaranteed and explained to him in the Ekegusii language which he understands best, by the Court Assistant Ms. Anita and in the presence of his counsel, Mr. .

15. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 5TH DAY OF DECEMBER 2024.

W. A. OKWANY

JUDGE

