



REPUBLIC OF KENYA



**Republic v Ismail (Criminal Case E003 of 2023)
[2024] KEHC 15257 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15257 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E003 OF 2023
JN ONYIEGO, J
DECEMBER 4, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ABUBAKAR ABDULLAHI ISMAIL ACCUSED

RULING

1. Accused person is charged with the offence of murder contrary to section 203 as read with Section 204 of the *penal code*. Particulars are that on the 11th day of January 2023 at Wajir Bor Trading centre in Khorof Harar Suc-County, within Wajir County he unlawfully murdered one Abdullahi Ismail Ali.
2. Having pleaded not guilty, prosecution called five witnesses. Upon close of the prosecution case, counsel elected not to submit at this stage hence relied on the evidence on record.
3. It is trite that in a criminal trial, once the prosecution closes its case, the court is call upon to make a finding whether the evidence tendered meets the threshold of a prima facie case to enable the court put accused on his defence. 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.
4. Section 306 (1) of the *Criminal Procedure Code* does provide 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 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. Having considered the testimonies of the prosecution witnesses, the question that begs for an answer at this stage is whether the evidence tendered herein establishes a prima facie case against the accused or better still, whether the accused has a case to answer.
6. In *Republic vs Abdi Ibrahim Owl* [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.”

[Also see *Ramanlal Trambaklal Bhatt vs R* [1957] E.A 332].
7. From the above, can this court on the basis of the evidence so far tendered by the prosecution properly directing itself to the law and evidence convict if the accused chooses not to give any evidence?
8. In the case of *Ronald Nyaga Kiura vs 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...*”
9. 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.
10. In *Festo Wandera Mukando vs Republic* [1980] KLR 103, the court held thus:

“...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 count or counts concerned.”
11. Without delving into the depths of the witnesses’ testimonies, I am satisfied that the Prosecution through the testimony of pw1-pw5 and the available circumstantial evidence have established a prima facie case against the accused person to warrant him to be placed on his defence. I therefore find that the accused herein has a case to answer and is therefore placed on his defence.
12. Accordingly, section 211 of the *CPC* shall be complied with to the extent that; accused shall be at liberty to give sworn testimony in which case he will be subjected to cross examination by the prosecution; Alternatively, he can opt to give unsworn testimony to which he will not be subjected to cross examination. Third option, he can choose to keep quiet. In either option, he shall be at liberty to call witnesses.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 4TH DAY OF DECEMBER 2024

J. N. ONYIEGO

JUDGE

