

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

CRIMINAL CASE NO. E014 OF 2022

REPUBLIC.....PROSECUTION

VERSUS

MUNGA BAKARI MWANGENI

.....RESPONDENT

RULING

1. The accused is charged with the offence of murder contrary to Section 203 as read Section 204 of the Penal Code. It is alleged that on 8.3.2020 at Kilifi Town, Kilifi North Sub-County within Kilifi County, the accused murdered Pendo Charo Konde. The accused denied committing the offence.
2. The prosecution closed its case after calling 6 witnesses. The Court is now called upon to determine whether a *prima facie* case has been established to warrant the accused person to be placed on his defence to answer to the charge of murder.
3. Section 306(1) of the Criminal Procedure Code stipulates the procedure to be followed at the close of the prosecution case as follows:
 - (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 to adduce evidence, the court shall call upon him to enter upon his defence.*

4. The law is that after hearing the testimony of the prosecution witnesses, the court is required to determine whether it considers that there is evidence that the accused herein committed the offence. In the event that the court is so satisfied, it shall inform the accused of his right to address the court. This may be done either personally or by his advocate. The accused shall also be informed of his right to give evidence on his own behalf, or to make an unsworn statement, to call witnesses in his defence, and to state whether he intends to call any witnesses as to fact other than himself. Having done so, the court shall record the fact.

5. In the present case, this Court is called upon to determine if, based on the evidence adduced by the prosecution, a *prima facie* case has been established. In other words, the Court must determine if, after properly directing its mind to the law and the evidence on record, it can convict the accused even if he chooses to give no evidence.

6. In this regard, I associate with the holding in **Republic vs. Abdi Ibrahim Owl [2013] eKLR** where Mutuku, J. 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 a presumption unless disproved or rebutted”. “Prima facie case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with.

7. The learned Judge went on to cite **Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335**, where the Court of Appeal stated:

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.” (Underlining is mine).

8. As I consider the evidence adduced by the prosecution, I am keenly aware that at this stage, it is undesirable to give a reasoned ruling. Suffice it to say that having considered the material placed before me and without delving further into the evidence adduced, I am satisfied that the prosecution has established a *prima facie* case. The accused has a case to answer and is accordingly placed on his defence.

DATED SIGNED and DELIVERED in MALINDI this 13th day of October 2025

M. THANDE
JUDGE