



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mbinda (Criminal Case 385 of 2020)
[2025] KEMC 236 (KLR) (7 August 2025) (Ruling)**

Neutral citation: [2025] KEMC 236 (KLR)

**REPUBLIC OF KENYA
IN THE MAKINDU LAW COURTS
CRIMINAL CASE 385 OF 2020
YA SHIKANDA, SPM
AUGUST 7, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

ALIDAN MAITHYA MBINDA ACCUSED

RULING

1. Alidan Maithya Mbinda (hereinafter referred to as the accused person) is charged with the offence of Stealing contrary to section 278A of the *Penal Code*. The particulars of the offence are that on 16/4/2020 at Kibwezi township in Kibwezi Sub-county within Makueni County, the accused person stole motor vehicle registration number KCJ 180R valued at Ksh. 3 Million, the property of Mukulu David Nzuki. The accused person was alternatively charged with the offence of handling stolen property contrary to section 322 of the *Penal code*. The particulars of the offence are that on 16/4/2020 at Kibwezi township in Kibwezi Sub-county within Makueni County, the accused person other than in the course of stealing dishonestly undertook the retention of motor vehicle registration No. KCJ 180R valued at Ksh. 3 Million, the property of Mukulu David Nzuki, knowing or having reason to believe it to be stolen. The accused person pleaded not guilty where after the matter was set down for hearing.

The Evidence

2. The prosecution called a total of three (3) witnesses in a bid to prove its case against the accused person. PW 1 Mukulu David testified that she was the owner of motor vehicle registration No. KCJ 180R. That on 16/4/2020 she released the motor vehicle for business but the motor vehicle was not returned. The complainant was told that the motor vehicle was at the home of a beer supplier. She reported to the police and the motor vehicle was recovered from the home of the accused person. PW 2 Victor Wanjala Nyongesa testified that on 16/4/2020 he was driving the motor vehicle in issue. That he was instructed to take liquor to the accused person. When he got there, he was shown where to park. Upon parking, the accused person asked him to leave the motor vehicle. The witness left the



motor vehicle then called his employer. The witness later went and collected the motor vehicle in the company of the police.

Main Issue For Determination

- 3 The main issue for determination at this stage is whether the Prosecution has established a prima facie case to warrant the accused person to be placed on his defence.

Submissions on behalf of the Accused

4. At the close of the Prosecution case, the accused person filed written submissions. The accused person submitted that the prosecution had failed to discharge its burden of proving the case beyond reasonable doubt. That the evidence was riddled with material inconsistencies, lacked proper documentation and fails to establish the essential elements of the offence of stealing. The defence argued that there was lack of a fraudulent intent on the part of the accused person. However, the defence appeared to adduce evidence in the name of submissions to show that the accused person had a bona fide claim of right. That PW 2 willingly drove the motor vehicle to Kibwezi.
5. The defence submitted that there was a contradiction between the investigation diary and the charge sheet as to who detained the motor vehicle. That the investigating officer acknowledged a pre-existing monetary dispute supporting the accused person's claim that this was a civil matter improperly brought before this court. The accused person urged the court to dismiss the charge and acquit him.

Analysis And Determination

6. I have carefully considered the evidence on record as well as the law applicable. I have further given due regard to the submissions by the defence. A prima facie case is defined in the *Mozley and Whiteley's Law Dictionary* 11th Edition as:

“A litigating party is said to have a prima facie case when the evidence in his favour is sufficiently strong for his opponent to be called on to answer it. A prima facie case then is one which is established by sufficient evidence and can be overthrown only by rebutting evidence adduced by the other side.” Emphasis added

7. The locus classicus on what constitutes a prima facie case is to be found in the celebrated case of *Ramanlal Trambaklal Bhatt v. R* [1957] E.A 332 at 334 and 335, where the court stated 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 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 mine)

8. In the authority of *Ronald Nyaga Kiura v Republic* [2018] eKLR, the court observed that a prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a



court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person. In my considered view, for the court to find that a prima facie case has been made out against an accused person, the prosecution must have established the following:

- a. That the offence complained of was indeed committed; and
 - b. That the evidence links the accused person to the offence complained of.
9. It is my further opinion that in order to show that the offence complained of was indeed committed, the prosecution must establish the key ingredients of the offence. A prima facie case is an early screen for a court to determine whether the prosecution can go forward to try the accused person fully for the crime. As such, the standard of proof that the prosecution must satisfy at the prima facie case stage is lower than that for proof that the accused is guilty, that is, lower than proof beyond reasonable doubt. In order to establish a prima facie case, a prosecutor need only offer credible evidence in support of each element of a crime.
10. Stealing is defined under section 268 of the [Penal Code](#) as follows:
- “(1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person, other than the general or special owner thereof, any property, is said to steal that thing or property.
 - (2) A person who takes anything capable of being stolen or who converts any property is deemed to do so fraudulently if he does so with any of the following intents, that is to say—
 - (a) an intent permanently to deprive the general or special owner of the thing of it;
 - (b) an intent to use the thing as a pledge or security;
 - (c) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;
 - (d) an intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;
 - (e) in the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.”
11. Was the offence committed? The evidence reveals that the complainant and the accused person knew each other and did business. The evidence further reveals that the motor vehicle was driven to the accused person’s compound by PW 2 for purposes of business. PW 2 stated that he even locked the motor vehicle and left. When the police went to the scene, the motor vehicle was found to be intact. The investigating officer confirmed that there was a dispute over payment and that is why the motor vehicle was detained. When the complainant was cross-examined by Counsel for the accused person, she stated that the accused person did not steal the motor vehicle but just detained it. These are people who did business together and had a dispute over payment. The evidence on record does not show that the accused person acted with an intent to permanently deprive the complainant of the motor vehicle.



Detaining the motor vehicle over a payment dispute may not have been the right approach but it does not amount to stealing.

12. Section 268(5) of the Penal code provides that a person shall not be deemed to take a thing unless He moves the thing or causes it to move. The evidence does not show that the accused person moved or caused the motor vehicle to move. According to the evidence, the motor vehicle was driven to the accused person's place of business by PW 2 and all that the accused person did was to detain it. I am aware that at this stage, the Prosecution need not prove its case beyond reasonable doubt. However, the prosecution evidence must be sufficient to warrant the accused person to be called upon to offer an explanation. It should be credible and not the kind that leaves glaring gaps.
13. The test in determining a prima facie case was laid down in Republic v Galbraith [1981] WLR 1039, in the following words:
 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.
14. Having considered the evidence on record, I find no proof of commission of the offence of stealing. This appears to have been a case of a business deal gone sour. The prosecution has failed to establish the key ingredients of the offence.

Disposition

15. The upshot of the above considerations is that the Prosecution has failed to establish a prima facie case to warrant the accused person to be placed on his defence. It is not the duty of the accused person to fill in the gaps or tie up the loose ends in the prosecution case. As rightly held in the case of Ramanlal (supra), a mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence. If I were to place the accused person on his defence and he opted to remain silent, this court would not convict him. I find and hold that the accused person has No Case to answer and proceed to acquit him of the charge under section 210 of the Criminal Procedure Code.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 7TH DAY OF AUGUST, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

