

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
(CORAM: R. MWONGO, J.)
CRIMINAL CASE NUMBER E016 OF 2023

REPUBLIC.....PROSECUTION

-VERSUS-

DAVID KINYUA.....1ST ACCUSED

KELVIN MACHARIA NJAGI.....2ND ACCUSED

R U L I N G

The Charge

1. The accused persons have been charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of the offence are that on the night of 03rd September 2023 at Itherembu village in Mariari sub-location, Kiambere location, Mbeere South subcounty in Embu County, the accused persons jointly murdered Peter Mwangi Njeru.
2. The accused pleaded not guilty and the plea was duly entered. The case proceeded to trial and the prosecution called nine (9) witnesses and then closed its case.

Written Submissions

3. The prosecution filed written submissions arguing that it had established a prima facie case against the accused persons. It stated that the evidence adduced proves that the deceased died in the hands of the accused persons and it is appropriate that they be placed on their defense. Reliance was placed on Article 26(1) of the Constitution on the right to life, section 206 of the Penal Code and the cases of **Anthony Ndegwa Ngari v Republic [2014] KECA 424 (KLR)**, **Republic v Stephen Sila Wambua [2017] KEHC 1165 (KLR)** and **Joseph Kimani Njau v Republic [2014] KECA 229 (KLR)**.

Issue

4. The issue for determination is whether a *prima facie* case has been established against the accused persons.

Analysis

5. 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. Further, whether the prosecution has established a *prima facie* case. The provision states:

“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.”

6. The court in the case of **Republic v Abdi Ibrahim Owl [2013] KEHC 2122 (KLR)**, 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. In other words, a *prima facie* case is a rebuttable presumption that the accused person is guilty of the offence. This is the position held at Section 211 of the Criminal Procedure Code. Further, in the case of **Ramanlal Trambaklal Bhatt v R (1957) E.A 332 at 335**, 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’s case, the case is merely one in which on full consideration might possible 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.....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, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”.

8. Nevertheless, where the court is not acquitting the accused person, there is no need to give a deep reasoning in a ruling for case to answer. The case would have been otherwise where there was a submission on ‘no case to answer’ as the court would have been required to give its reasons for considering that the accused has no case to answer.

Disposition

9. Considering the evidence by the prosecution in its entirety, it is my view that a *prima facie* case has been established. The accused persons are hereby placed on their defence, and then defence options under Sections 306 and 307 CPC shall be explained to them.
10. Orders accordingly.

Delivered, dated and signed at Embu High Court this 29th day of October, 2025.

**R. MWONGO
JUDGE**

Delivered in the presence of:

1. Accused 1: Present in Court
2. Accused 2: Present in Court
3. Muchangi for both accused
4. Francis Munyao - Court Assistant