



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRC/E023/2023

REPUBLIC VS PATRICK KONDE

RULING

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CRIMINAL CASE NO. e023 OF 2023

REPUBLIC..... PROSECUTOR

-VERSUS-

PATRICK MBOGO KONDE.....1ST.....ACCUSED

3RD ACCUSED

RULING

1. The accused person was charged with the offense of murder contrary to **Sec 203** as read with **Sec 204** of the **Penal Code**, particulars of which are that on the 19th day of September 2023 at Maunguja village in Kisauni Sub-county, within Mombasa County he murdered ZILPA HABWOYA KOMBO
2. The accused was arraigned in court and the information read out to each of them and to which HE pleaded not guilty.
3. The trial commenced on 21ST NOVEMBER, 2023 where the prosecution called a total of six (6) witnesses

Analysis and Determination



1. As per the evidence on record it is apparent that the Accused person was seen attacking the deceased,
2. I have considered the evidence so far from the prosecution's side. The issue before me at this stage is, whether the evidence so far adduced warrants calling upon the accused to defend themselves. In other words, does the accused have a case to answer? In [Republic v Abdi Ibrahim Owl](#) [2013] eKLR a prima facie case was defined 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.

1. It is noteworthy that a prima facie case does not necessarily mean a case which must succeed. In other words, despite finding that a prima facie case has been made out, the Court is not necessarily bound to convict the accused if the accused decides to maintain his silence. At the conclusion the Court will still evaluate the evidence as well as the submissions, if any and make a finding whether, based on the facts and the law, the prosecution has proved its case beyond reasonable doubt, which is not the same standard applicable to the finding of existence of a prima facie case for the purpose of a case to answer.
2. Nevertheless, it is not lost to this court the danger in making definitive findings at this preliminary stage, especially where the Court finds that there is a case to answer. As was appreciated by Trevelyan and Chesoni, JJ in [Festo Wandera Mukando v The Republic](#) [1980] KLR 103:

“...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.”

1. Therefore, the question that this Court must contend with and answer at this stage, is whether based on the evidence before this Court, the Court after properly directing its mind to the law and the evidence may convict if the accused chose to give no evidence.
2. As I noted earlier on, the accused person was seen assaulting the deceased who was declared dead thereafter. Without delving deep into the matter and having appreciated the material placed before me I am satisfied that the prosecution has established a prima facie case to the end that the accused persons have a case to answer. Accordingly, hereby put on his defense.
3. Consequently, the accused's rights under Article 50 (2) (i) (k) and (l) of the Constitution as read with Sec 306 (2) of the Criminal Procedure Code shall be guaranteed and explained to each, in a language he comprehends and understands before his legal counsel.

DATED, SIGNED and DELIVERED at NAIROBI Virtually this 13th day of November 2025.

JUDGE

W.K. MICHENI



IN THE PRESENCE OF;

THE ACCUSED PERSONS Khamisi Salim

FOR THE PROSECUTOR MR NGIRI

COURT ASSISTANT MS BEBORA

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2025-11-13 11:21:56

