

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**(CORAM: R. MWONGO, J.)**  
**CRIMINAL CASE NUMBER E004 OF 2024**

REPUBLIC.....PROSECUTION

**-VERSUS-**

**KELVIN MUKUNDI MURIITHI alias**

**KELVIN MUKUNDI KINYUA.....ACCUSED**

**R U L I N G**

**The Charge**

1. The accused faces the charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of the charge are that on 11<sup>th</sup> January 2024 at Soo village, Kevote sub-location, Makengi location in Embu West subcounty within Embu County, the accused murdered Emmaculate Marigu Njue.
2. The accused took a plea of not guilty and the same was duly entered. The case proceeded to trial and the prosecution called twelve (12) witnesses.

**Issue**

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

**Analysis**

4. 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.”***

5. 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 8<sup>th</sup> 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.”***

6. 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”.***

7. Nevertheless, where the court is not acquitting the accused person, there is no need to engage in 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.

8. Considering the evidence by the prosecution in its entirety, it is my view that a *prima facie* case has been established. The accused person is found to have a case to answer and be placed on his defense.
9. The accused are advised on their options. Namely, that they may maintain silence, or provide an unsworn statement with witnesses in which case the accused will not be cross examined; or they may give sworn evidence with witnesses in which case they will be subject to cross examination.
10. Orders accordingly.

**Delivered, dated and signed at Embu High Court this 12<sup>th</sup> day of November, 2025.**

---

**R. MWONGO  
JUDGE**

**Delivered in the presence of:**

1. Accused Person present in Court
2. Ms. Nzekele for Accused
3. Ms. Nyika for the State
4. Francis Munyao - Court Assistant