

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL CASE NO. E006 OF 2025

**REPUBLIC
PROSECUTOR**

.....

VERSUS

SAMUEL MUTUNDU MUTUNE ALIAS

**SAMUEL KIVUVA KYALO ALIAS SAMMY.....
ACCUSED**

RULING

1. The accused person herein is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 Laws of Kenya. The particulars of the offence are that on the 11th day of March, 2025, at Korakora area, in Garissa Central Sub-County, within Garissa County, he murdered John Mutinda Kimanzi.
2. Having denied the charge, the case proceeded to full trial with the prosecution adducing evidence from 9 witnesses in its endeavour to discharge the burden of proof beyond reasonable doubt. As such, at this stage, this court's role is to consider the evidence on record and make a determination as to whether the same presents a *prima facie* case that would warrant this court to call upon the accused person to give his defence pursuant to Section 306 of the CPC.
3. Under section 211 of the Criminal Procedure Code, 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. **[See Ramanlal Trambaklal Bhatt v R [1957] E.A 332 at 334 and 335].**

4. Similar position was held in the case of **Republic V Abdi Ibrahim Owl [2013]eKLR and Ronald Nyaga Kiura V Republic (2018) eKLR**.
5. However, it is trite that, where the court is not acquitting the accused person at the close of prosecution's case, there is no need for a reasoned ruling for a case to answer. Reasons should only be given where the submission of a no case to answer by the accused is upheld and the accused is to be acquitted. **[See Festo Wandera Mukando v Republic [1980] KLR 103]**.
6. Therefore, at the close of the prosecution's case, it is the duty of the trial court to examine and assess the evidence tendered by the prosecution so as to establish whether the elements of a prima facie case are in existence and if so, the accused will be invited to give his defence either on oath or unsworn or he may even elect to exercise his constitutional right of keeping silent. In the event he is called upon to state his defence as provided under section 306 of the Criminal Procedure Code, besides adducing evidence from himself/herself, he/she can also call witnesses to rebut the prosecution's case.
7. In the instant case, circumstances under which the offence was allegedly committed as stated by PW1-PW9 revolve around a quarrel which ensued between the accused and the deceased. It is alleged that the deceased and the accused, who were friends and farmers at Kolakola, became involved in a dispute concerning farm items which they had led to each other.
8. Thus a review of the prosecution evidence and confining myself to the live issues relevant to the making of the decision under section 306 of the Criminal Procedure Code, I am satisfied that a prima facie case has been established to place the accused person on his defence. To that extent the is informed of his rights under section 211 of CPC. Consequently, he can opt to give sworn testimony in which case he will

be subjected to cross examination or give unsworn testimony in which case he not be subjected to cross examination or opt to keep quiet. In either case he will be at liberty to call witnesses.

Dated, signed and delivered in open court this 26th day of November, 2025

.....
J. N. ONYIEGO
JUDGE