



**Republic v Otieno (Criminal Case 24 of 2019)  
[2025] KEHC 17835 (KLR) (1 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17835 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL CASE 24 OF 2019  
RN NYAKUNDI, J  
DECEMBER 1, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**DIDI JOHN OTIENO ..... ACCUSED**

**RULING**

1. Before this court is an accused person charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that: On 16<sup>th</sup> day of March, 2019 at Talai farm, Moi University in Keses sub county within Uasin Gishu County murdered Felix Oduor Ochieng.
2. The Accused person pleaded not guilty and therefore placing the burden of proof upon the prosecution to establish the elements of the offence beyond reasonable doubt. The prosecution was initially led by Mr. Mugun for the State and later taken over by M/s Sidi Kirenge. The lead counsel for the defence was Mr. Miyianda Advocate. In order to discharge the burden of proof of beyond reasonable doubt, the prosecution relied on the testimonies of 10 witnesses. It was at this juncture the prosecution closed its case calling for the court to invoke the provisions of Section 306 of the CPC on a motion of a case to answer or in the alternative to rule on a motion of no case to answer.
3. By virtue of this section, and the rules made thereinunder, the contention in whether any of the elements of the offence as framed by the persecution implicating the accused have been established to warrant an answer since the totality of the evidence adduced is based on the impression by the prosecution alone, its incumbent for the court not to arrive at findings on the merits of fact or issue. In determining this half time submissions of a motion of no case to answer or a prima facie case needless to say that the principle in *Miller v Minister of Pension (1942) AC 1* sums it as follows: “It need not reach certainty, but it must carry a high degree of portability. Similarly, in *Bakare v State (1985) 2 NWLR 465*



Oputa JSC held inter alia that “ Absolute certainly is impossible in any human adventure including the administration of criminal justice

4. In the present case therefore, the fact of what happened must point to the charge as on the high probability of what happened and utmost to certainty but not conclusively, beyond reasonable doubt. In the case of *Wilson v Buttery* (1926) S.A SR 150 the court stated on the teste that supports a prima facie case as follows” If a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit, but on whether, the evidence is such that a reasonable tribunal might convict. This correct approach was further restated in the case of *Mary v O Sellivan* (1955) 92 C.L.R though an English court it did address the provisions of Section 306 of our criminal procedure code on this issue of a prima facie case and a motion of no case to answer. The principle laid down by CJ Webb fallagar, Kitto and Tayner JJ was as follows “ The question to be decided is not whether on the evidence as it stands the defendant ought to be convicted, but whether on the evidence as it stands, he could lawfully be convicted
5. The power under Section 306 of the CPC is a discretionary one and is to be exercised sparingly in answering the two typologies, first whether prima facie case has been made out by the prosecution to warrant the Accused person to called upon to state his or her defence. Second, is whether the evidence on record is not capable of shading light on the elements of the offence and that in the opinion of the court some other person who is not before court may be the one to have been arrested and charged with the offence instead of the accused person. It will follow therefore, the court to determine a motion of no case to answer and have the accused person set free indeed for lack of evidential material on the stipulated elements of the offence in question. In the case of a prima facie case, if it goes unrebutted it will lead into a conviction.
6. The court is the sole repository of justice and a duty is case upon it to uphold the rule of law and therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.
7. As regards the degree of satisfaction required by the legislature under Section 306 of the Criminal Procedure Code, it is expected that discretion on a prima facie case should look at the particulars of the charge, the extent of the evidence presented and the surrounding circumstances so as to answer the question whether the accused person can be squarely placed at the scene of the crime. In the 2<sup>nd</sup> limb of the question on a prima facie case, is whether the strong and cogent evidence against the accused person which if there is no defence or rebuttal, there will be a necessity to lawfully convict and proceed to impose sentence.
8. In the case at bar, I have reviewed the evidence of the 10 witnesses together with the postmortem form and the report of the government analyst and in exercising this original jurisdiction I hold the view that the limb on a prima facie case has been made out by the state under Section 306 of the CPC to call upon the Accused to state his defence. The backdrop of this defence shall also bear in mind the following constitutional provisions under Article 50 on the right of the Accused to remain silent and not to testify during the proceedings. In addition, the accused has also a right to adduce and challenge the evidence by the state and further he has a safeguard to refuse to give self-incriminating evidence. In so far as this matter is concerned, I make a finding of a prima facie case for the defence to repair and answer the issues arising out of the evidence against him in connection with the allegations raised in consonant with Section 203 of the Penal Code. The defense hearing shall proceed on 21.1.2026.



GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 1<sup>ST</sup> DAY OF DECEMBER  
2025

.....

**R. NYAKUNDI**

**JUDGE**

In the Presence of

Mr. Miyinda Advocate for the Accused

Accused for the

