



**Wanyonyi v Republic (Criminal Case E013 of 2024)  
[2025] KEHC 17866 (KLR) (1 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17866 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL CASE E013 OF 2024  
RN NYAKUNDI, J  
DECEMBER 1, 2025**

**BETWEEN**

**BENSON WANYONYI ..... ACCUSED**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The accused person is charged with the offence of murder contrary to Section 203 as read with Section 204 of the penal code. The particular of the offence being that on the 17<sup>th</sup> day of March 2024 at Kapsogas village, in Turbo Sub County within Uasin Gishu County, in the Republic of Kenya murdered Anita Chepkogei.
2. The accused persons pleaded not guilty and the burden of proof vested with the State requires of them to summons evidence to prove every element of the offence of Murder contrary to section 203 of the penal code. In this respect the prosecution was conducted by M/s Sidi Kirenge whereas the defence or accused was represented by Mr. Tarigo Advocate.
3. The prosecution summoned five witnesses to establish the existence or non-existence of facts for the alleged offence under Section 107 (1), 108 & 109 of the *Evidence Act*. It is at the close of the prosecution case that the court is required to rule on existence of a prima facie case or a motion of no case to answer. The court in *Wilson v Buttery* {1926} S. A. SR 150 stated on the test 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 *May v O’ Sullivan* {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.”

4. The term “prima facie” is derived from Latin and means “at first sight” or “at first appearance”. This is adequate to establish a fact or raise suspicion until it is disproved in court. A prima facie case is a cause of action or defence that is sufficiently established by a party’s evidence to justify a verdict in his or her favour, although even if the case is determined to be a prima facie, this does not guarantee that judgment by the court will be in favour of the prosecution. This is the task which must be answered by a trial court at half time in adversarial proceedings.
5. It is the duty of the prosecution to successfully establish a prima facie case on the elements of the offence against the accused persons. It is at that time the burden of proof shifts to the accused person(s) who must now provide evidence to disapprove the State case commonly referred to as the prosecution case. If an accused person (s) presents sufficient evidence the court would dismiss the charge and set him or her of any wrong doing.
6. As a result it is the requirement of the law that the level of proof that the prosecution must meet in the prima facie case stage is lower than the requirement for proving the accused guilt beyond reasonable doubt. What the law envisages at half-time under Section 306 of the CPC is that the prosecution simply needs to present credible evidence in support of each element of a crime to establish a prima facie case.
7. In my view what do I see as the key condition precedents or implications of a prima facie case in a criminal trial: The prosecution must present prima facie evidence and must present a plausible enough case to proceed to trial and invite the defence to give their side of the story of the crime. If the prosecution does not present adequate evidence that a crime was committed or could have been committed by the accused, then a motion of no case to answer takes effect and the charge shall be dismissed forthwith. The notion of prima facie case is not limited to the pre-trial phase of a criminal case. It is also used as a general standard of evidence evaluation and scrutiny under Section 306 of the Criminal Procedure Code. The goal of this phase of the trial is commonly referred to as half time submissions by either party to the criminal trial under Section 306 of the CPC as read with Section 107 (1, 108 & 109 of the *Evidence Act*. It is not to prove that the Accused is guilty of any offence. It is merely to show or to demonstrate whether the court should proceed with the trial to conclusion or have it stopped at that stage. Therefore, consequently the Judge merely decides whether the case will go to defence without making any making any kind of judgement about the guilt of the accused. While the standards of proof for prima facie evidence is low, it is nevertheless an important part of the legal process. By making the prosecution present a basic version of their cases, people are protected against frivolous or criminal proceedings
8. As for this case I have analyzed the evidence of the four witnesses summoned by the State and I am satisfied that the prosecution has met the legal threshold of a prima facie case under section 306 of the CPC for the accused person to be called upon to State his defence. The defence shall therefore proceed on the 3.12.2025.

**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

Accused

M/s Sidi for the State.

