

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE NO. 72 OF 2020

REPUBLIC
DPP

=VERSUS=

PHILLIP AMBOKE KAVUNJA
ACCUSED

Coram: Justice R. Nyakundi
Ms Sidi for State

RULING

1. Before this Court is an application which has two limbs. First whether the Prosecution has discharged the burden of proof at half time commonly known as a prima facie case to warrant the accused person to be called upon to state his defence. Second, if the answer to the above element is in the negative then the question which carries the day is that of an accused person has no case to answer.
2. The legal provisions to this effect include Article 50(2) (a) of the Constitution which provides that every accused person has a right to a fair trial which includes the right to be presumed innocent until the contrary is proved. The other significance provision is provided for under Section 306 of the Criminal Procedure Code.

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 several accused committed the offence shall after hearing if necessary any arguments which the advocates for the prosecution or the defence may deserve to submit, record a finding of not guilty. When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is

evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn¹ statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact. If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon him to enter upon his defence.

3. The accused person before this court is charged with the offence of murder contrary to Section 203 as punishable under Section 204 of the Penal Code. The particulars of the offence are that on 27/11/2020 at Chebarus village within Uasin Gishu County jointly with others not before Court murdered Andrew Wanyika. Based on this background the Prosecution adduced evidence of five witnesses which included documentary evidence in the form of a post mortem report.
4. I have reviewed in detail each testimony of the five witnesses and am satisfied that the threshold of a prima facie case stipulated in the law has been met for the accused person to be called upon to state his defence.

**GIVEN UNDER MY HAND AND SEAL OF THIS HONORABLE COURT
THIS 15TH DAY OF JANUARY 2026.**

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R. NYAKUNDI
JUDGE