

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MARALAL

HIGH COURT CRIMINAL CASE NO. 2 OF 2023

REPUBLIC PROSECUTOR

TOR

VERSUS

SAMUEL

LEDUDA..... ACCUSED

RULING ON CASE TO ANSWER

1. The Accused person, Samuel Leduda is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the charge are that between the 16th day of February and 23rd day of February 2023 murdered Annah Regina Leduda.
2. The prosecution called a total of 7 witnesses in support of its case. Upon the close of the prosecution case, the court is required, under section 306 of the Criminal Procedure Code,

to determine whether a prima facie case has been established to warrant placing the Accused on his defence.

3. Both parties filed written submissions. Learned counsel for the Accused submitted that the prosecution has failed to establish a prima facie case. Counsel argued that the case rests purely on circumstantial evidence which does not irresistibly point to the guilt of the Accused. It was contended that there is no direct evidence linking the Accused to the death of the deceased and that the prosecution failed to prove malice aforethought.
4. Learned prosecution counsel argued that the chain of circumstantial evidence adduced points irresistibly to the Accused as the perpetrator of the offence. Counsel submitted that the Accused was the last person seen with the deceased, had motive, and that the circumstances exclude any other reasonable hypothesis except that of guilt.
5. The sole issue for determination at this stage is whether the prosecution has established a prima facie case sufficient to require the Accused to be put on his defence.

6. Under section 306(1) of the Criminal Procedure Code, if at the close of the prosecution case the court considers that there is no evidence that the Accused committed the offence, it shall record a finding of not guilty. Conversely, under section 306(2), where a prima facie case is disclosed, the court shall call upon the Accused to make his defence.
7. The test of what constitutes a prima facie case was set out in **Bhatt v R [1957] EA 332**, where the court held that a prima facie case is one on which a reasonable tribunal, properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defence. The court must not at this stage decide whether the evidence is sufficient to sustain a conviction, but only whether there is evidence upon which the Accused may reasonably be called upon to answer.
8. Where the prosecution case is founded on circumstantial evidence, the applicable principles are well settled. In **Sawe v Republic [2003] KLR 364**, the Court of Appeal held that circumstantial evidence must be such that it points irresistibly to the Accused and excludes any other

reasonable hypothesis than that of guilt. The chain of circumstances must be complete and incapable of explanation upon any other hypothesis than that the Accused committed the offence.

9. The prosecution evidence, in summary, establishes that the deceased was living with the Accused as husband and wife. The deceased was to attend a family wedding at her home and when she did not turn up, inquiries were made and the accused stated he had given her sh 1000 fare to travel. Investigations led to the recovery of the body in a pit latrine in the couple's compound.
10. Several witnesses testified to circumstances placing the Accused at or near the scene where the deceased's body was later recovered. Evidence was also adduced regarding the conduct of the Accused before and after the death of the deceased.
11. Although there is no direct eyewitness testimony of the act causing death, the court is alive to the principle that a conviction may be founded on circumstantial evidence provided the requisite tests are met. At this stage, the court

is not required to finally determine whether the chain of evidence is complete beyond reasonable doubt, but whether the evidence, if left uncontroverted, could support a conviction.

12. Having carefully evaluated the prosecution evidence on record, I am satisfied that there exists evidence linking the Accused to the death of the deceased. The circumstances relied upon by the prosecution, taken cumulatively, are not merely suspicious but disclose a nexus between the Accused and the offence which calls for an explanation.

13. Accordingly, I find that the prosecution has established a prima facie case against the Accused person.

14. The Accused is hereby placed on his defence pursuant to section 306(2) of the Criminal Procedure Code.

Dated signed and delivered virtually this 27th January 2026

A.K. NDUNG’U

JUDGE