

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MARALAL

HIGH COURT CRIMINAL CASE NO. E007 OF 2024

REPUBLICPRO

SECUTOR

VERSUS

NELSON MANDELA

OMWONO.....ACCUSED

RULING ON CASE TO ANSWER

- 1.** The Accused person, Nelson Mandela Omwono 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 on the 6th day of November, 2020 in Laikipia East Sub- County, Laikipia County murdered Simon Karinga Macharia.
- 2.** The prosecution called a total of 10 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. I have had occasion to consider the charge, the evidence and submissions on record.

4. 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.

5. 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.

6. The evidence adduced in this matter is largely circumstantial. 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.

7. On the evidence on record, I am satisfied that 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.

8. 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.

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

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

Dated signed and delivered virtually this 18th day of February, 2026.

A.K. NDUNG’U

JUDGE