



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Otieno (Criminal Case E008 of 2025)
[2026] KEHC 1547 (KLR) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1547 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE E008 OF 2025
WM KAGENDO., J
FEBRUARY 12, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

SELMAN ATIENO OTIENO ACCUSED

RULING

1. The accused person herein, Selman Atieno Otieno, was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on the 24/4/2025 at Kipevu-Migadini area Changamwe sub-county within Mombasa County murdered Kenneth Shaki Njule.
2. The accused was arraigned in Court where the information was read out to her, and she pleaded not guilty.
3. The prosecution called a total of 10 witnesses to support its case. I have carefully considered the evidence adduced by the prosecution. At this stage, the issue for determination before this court is whether the evidence so far presented warrants calling upon the accused to defend herself i.e whether the accused person has a case to answer or not.

Analysis and Determination

4. From the evidence on record, PW1 and PW4 were present at the hospital when they video recorded the deceased narrating his ordeal.



5. In Republic vs Abdi Ibrahim Owl (2013) eKLR, a prima facie case was defined as follows;

“‘Prima facie’ is a latin term defined by Black’s law dictionary, 8th edition, as “sufficient to establish a fact or raise a presumption unless disproved or rebutted.” ‘prima facie case’ is defined as “the establishment of a legally required rebuttable presumption.”

In simple terms, it refers to the establishment of a rebuttable presumption that an accused person is guilty of the offence charged, unless the contrary is proved.

1. It is noteworthy that a prima facie case does not necessarily mean a case that must ultimately succeed. The finding merely implies that the prosecution has produced sufficient evidence which, if left uncontroverted, could sustain a conviction. The final determination of guilt still requires proof beyond reasonable doubt, a higher standard that will be assessed at the conclusion of the entire trial.
2. This court is also mindful of the caution expressed in Festo Wandera Mukando vs Republic (1980) KLR 103, where Trevelyan and Chesoni, JJ stated;

“...we once more draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the Court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgement. Where a submission of ‘no case’ is rejected, the Court should say no more than it is. It is otherwise where submission is upheld, when reasons should be given; for then that is the end of the case or the count or counts concerned.”

6. In light of the above, the question before this court is whether, based on the evidence adduced so far, a reasonable tribunal properly directing itself to the law and the evidence could convict the accused if he elected to remain silent.
7. Having carefully evaluated the evidence presented, and without delving into detailed findings at this stage, I am satisfied that the prosecution has established a prima facie case sufficient to require the accused to be placed on her defence.
8. Accordingly, I find that the accused person has a case to answer and is hereby placed on her defence pursuant to Section 306 (2) of the Criminal Procedure Code. Her rights under Article 50 (2) (i), (k) and (l) of *the Constitution* shall be explained to her in a language she understands, in the presence of her legal counsel.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 12TH DAY OF FEBRUARY 2026. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

WENDY KAGENDO MICHENI

JUDGE

In the presence of;-

The accused person and her advocate Mr. Magolo Mr Sirima for the state

Bebora Court Assistant

