



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
CHERERE-J
HCCR E005 OF 2024

DIRECTOR OF PUBLIC PROSECUTIONS.....REPUBLIC
AND
EVANCE ONCHIENG ODHIAMBO.....1ST ACCUSED
BOAZ ODUOR ODHIAMBO.....2ND ACCUSED

RULING ON CASE TO ANSWER

1. The accused, **EVANCE ONCHIENG ODHIAMBO** and **BOAZ ODUOR ODHIAMBO** are jointly charged with murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars are that on 16th September 2022 at Miruka market Nyamira South Sub-County within Nyamira County jointly murdered Kevin Abuga

2. The prosecution closed its case after calling a total of five (5) witnesses in support of its case.

3. The question at this stage is whether the prosecution has established a prima facie case against the accused sufficient to warrant his being placed on his defence on both counts, under Section 306(2) of the Criminal Procedure Code.

4. The guiding principle on what constitutes a prima facie case is well settled. In **Ramanlal Trambaklal Bhatt v Republic [1957] E.A. 332**, the Court of Appeal 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. This position was reiterated in **Anthony Njue Njeru v Republic [2006] eKLR**, where the Court of Appeal emphasized that a prima facie case is not one that must necessarily result in a conviction if uncontroverted, but one which, if not controverted, might reasonably sustain a conviction.
5. Having considered the totality of the evidence tendered by the five prosecution witnesses, and guided by the principles in the above authorities, I am satisfied that the prosecution has established a prima facie case against the accused persons.
6. Pursuant to section 306(2) of the Criminal Procedure Code, the accused persons are hereby called upon to make their defence.
7. Defence Hearing on **03rd March 2026**

**DELIVERED AT NYAMIRA THIS 12th DAY OF February
2026**

**WAMAE.T. W. CHERERE
JUDGE**

Appearances

Court Assistant - Anita

Accused	- Present
For Accused	- Mr. Marita
For the DPP	- Mr. Chirchir (SADPP)