

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL CASE E012 OF 2022

REPUBLIC.....PROSECUTOR
R

VERSUS

DISMUS MOMANYI OBIERO.....
ACCUSED

RULING

1. ***Dismus Momanyi Obiero*** the Accused herein were charged with the information of Murder Contrary to Section 203 as read with 204 of the Penal Code. Particulars of the information are that on the

night 29th day of May, 2022 at Kapsoiyo Village, Kiptere Location, Kericho Sub - County within Kericho County, murdered ***Naomi Bosibori***.

2. On 20th September 2022, the accused person took a plea and pleaded not guilty to the charge of murder. The prosecution called nine (9) witnesses who testified in support of its case against the accused herein. The prosecution closed its case.

3. The Learned Counsel representing the accused urged the court to consider the evidence adduced by the prosecution in its ruling for case to answer.

4. The Learned Senior Assistant Director of Public Prosecution on her part maintained that the prosecution had established a prima facie case against the accused beyond reasonable doubt.

5. This court has considered the prosecution's case at length. Pw. 1 stated that she employed the accused, he requested to live in her kiosk and on the day of reporting she came with the deceased and that on the material date she went to the kiosk and found blood stains and she reported the incident to the police. Pw. 2 stated he the accused lived with the deceased and that on the material day he opened the door of the canteen and he found blood stains. Pw. 7 testified that he the identified the body of the deceased and the doctor told them that she was hit with a blunt object. Pw. 9 stated that he interrogated pw1 and that he observed the body and it had a deep cut and there was blood spilled all over the place, they recovered a wooden frame under the bed which had blood stains there was also a broken sword with fresh blood, he also testified that they recovered assorted clothes with blood stains, the items collected were taken to government chemist for analysis, he said that the accused had fled the scene. Pw. 8 testified that he was requested do a DNA examination from various exhibits that were listed in two memo forms he was to establish the origins of those stains, he testified that the samples obtained exhibit 'J' matched those from the accused he produced a report with his findings to the court. Pw. 5 a medical officer stated that he conducted an autopsy on the

deceased and formed the opinion that the cause of death was severe head injury due to trauma of the head by the use of blunt object and he produced the post mortem report.

6. I find that the prosecution witness accounts place the accused at the crime scene and there is direct evidence that the accused assaulted the deceased with a wooden frame and a panga, which wooden frame and panga was recovered at the crime scene and that the victim succumbed to the injuries she sustained as a result of the attack.

7. Having considered the testimonies of the prosecution witnesses, the question is whether the evidence tendered establishes a prima facie case against the accused or whether the accused has a case to answer. In **Republic v Abdi Ibrahim Owi [2013] eKLR**, the court defined a prima facie case as follows: “Prima facie’ is a Latin word defined by Black’s Law Dictionary 8th Edition as, “sufficient to establish a fact or raise presumption unless disapproved or rebutted”. ‘Prima facie’ is defined by the same dictionary as “the establishment of a legally required rebuttable presumption.” whereas in **Ronald Nyaga Kiura v Republic**, the court held: “ It is important to note that at the close of the Prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie case has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the **Criminal Procedure Code...**”

8. Having considered the material placed before me, I am satisfied that the prosecution has established a prima facie case. Consequently, the accused has a case to answer.

9. I accordingly place the accused person on his defence.

Dated, signed and delivered at Kericho this 30th day of March, 2026

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J. K. SERGON
JUDGE

In the presence of:

C/Assistant - Rutoh

Prosecutor - Ogutu

Accused - Present in Person

Kiprono for the Accused