

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL CASE NO. E002 OF 2025

REPUBLIC
.....PROSECUTOR

VERSUS

JOHN JOSEPH KILONZI.....1ST
ACCUSED

BOSCO MUMO KITHUMBI.....2ND
ACCUSED

ALEX MULI MAKAU.....3RD
ACCUSED

RULING

1. The Accused Persons herein are charged with the offence of **Murder Contrary to Section 203** as read with **Section 204 of the Penal Code**. The particulars of the offence are that, on the 15th day of February, 2025 at Bulla Sub-location, Bulla Ndege Location, Garissa Township Sub-county, Garissa County, Habbaswein Sub-county within Wajir County, in the Republic of Kenya, jointly murdered Abdi Hassan Jelle Alias Abdi Turkan.
2. Having denied the charge, the case proceeded to full trial with the prosecution adducing evidence from 9 witnesses in its endeavour to discharge the burden of proof beyond reasonable doubt. As such, at this stage, this court's role is to consider the evidence on record and make a determination as to whether the same presents a *prima facie* case that would warrant this court to call upon the accused persons to give their defence pursuant to **Section 306 of the Criminal Procedure Code**.
3. Under **Section 211** of the **Criminal Procedure Code**, a *prima facie* case is established where the evidence tendered by the prosecution is sufficient on

its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person. **[See Ramanlal Trambaklal Bhatt v R [1957] E.A 332 at 334 and 335].**

4. Similar position was held in the case of **Republic V Abdi Ibrahim Owl [2013] eKLR and Ronald Nyaga Kiura V Republic (2018) eKLR**.
5. However, it is trite that, where the court is not acquitting the accused person at the close of prosecution's case, there is no need for a reasoned ruling for a case to answer. Reasons should only be given where the submission of a no case to answer by the accused is upheld and the accused is to be acquitted. **[See Festo Wandera Mukando v Republic [1980] KLR 103].**
6. Therefore, at the close of the prosecution's case, it is the duty of the trial court to examine and assess the evidence tendered by the prosecution so as to establish whether the elements of a *prima facie* case are in existence and if so, the Accused will be invited to give his defence either on oath or unsworn or he may even elect to exercise his constitutional right of keeping silent. In the event he is called upon to state his defence as provided under **Section 306 of the Criminal Procedure Code**, besides adducing evidence by himself, /herself, he/she can also call witnesses to rebut the prosecution's case.
7. Thus, a review of the prosecution's circumstantial evidence leading to the arrest of the Accused Persons coupled with un explained injuries sustained by the 1st Accused and the traces of blood from the scene of the incident leading to the house where the Accused Persons were staying and confining myself to the live issues relevant to the making of the decision under **Section 306 of the Criminal Procedure Code**, I am satisfied that a *prima facie* case has been established to place the Accused Persons on their defence.

8. They are consequently informed of their rights under **Section 211 of Criminal Procedure Code**. Therefore, they are at liberty to make sworn testimony in which case they will be subjected to cross examination by the prosecution or; make unsworn testimony in which they will not be subject to cross examination and lastly; they can opt to keep quiet. In either option, they shall be at liberty to call witnesses.

Dated, signed and delivered in open court this **16th** day of **April, 2026**

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J. N. ONYIEGO
JUDGE