



**Republic v Edan (Criminal Case E001 of 2023)
[2025] KEHC 5147 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5147 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL CASE E001 OF 2023
RN NYAKUNDI, J
APRIL 29, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

EWOI EDAN ACCUSED

RULING

1. The accused person was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence were that on the 16th day of December, 2022, at Lokitela village in Narewa within Lodwar in Turkana county murdered Christine Lotuko Ekatorot.
2. The prosecution closed its case with the totality of evidence of four witnesses. During the trial, the accused person was represented by Mr. Lotir whereas Mr. Kakoi was the lead counsel for the prosecution. The law requires of the trial court at the closure of the prosecution case to take into account the evidence to rule on whether a prima facie case has been made out to call upon the accused person to state his defence. The applicable provision is section 306 of the Criminal Procedure Code which can be paraphrased as follows:

“If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused person sufficiently on all the elements of the offence, they require him to make a defence, he/she is liable to be acquitted or discharged of the said offence. However, on the other hand, if the evidence referred to by the prosecution establishes existence of evidence on the charge involving all the elements or any other inchoate offence the accused shall be called upon to state his/her defence.”



3. What is meant by a prima facie case is well articulated in the case of Republic vs. Abdi Ibrahim Owl [2013] Eklr:

“Prima facie” is a Latin word 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 by the same dictionary as “The establishment of a legally required rebuttable presumption”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with. In Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335, the court stated as follows:

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction.” This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defense will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence”. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence...It is may not be easy to define what is meant by a “prima facie case”, but at least it must mean 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 defense.”

(see also Ronald Nyaga Kiura vs. Republic (2018) eKLR and Ramanlal Bhat –vs- Republic (1957) EA 332)

4. In assessing the evidence at the close of the prosecution case, a distinction has to be drawn as of necessity to ensure there is no confusion on whether constitutes a prima facie case at half time stage and proof beyond reasonable doubt when a trial has been concluded and the parties heard on the merits. The provision of section 306 of the *Criminal Procedure Code* is a necessary requirement of the law for a trial court to consider at half time stage of the proceedings whether the prosecution can be said to have discharged the burden of proof for the allegations made against the accused person. When it comes to the finding of guilty, that is a question to be answered by invoking the due process clauses under Art. 50 of *the Constitution* for the accused person to be given an opportunity to state his/her defence to challenge the side of the prosecution case. Therefore, a prima facie case is distinguishable from that of proving the guilt of an accused person, which is a decision determined at the close of the entire case. It is at that stage when evidence has been taken from both sides, the court is required finally to assess the evidence establish its credibility, believability, reliability, admissibility, legality and place some weight on each of the contested facts to secure judgment for the prosecution or on the other hand for the accused person. In fact, there is a rule of thumb in our procedural law that a trial court is not required to given reasons when deciding whether or not there is a case to answer except of course, where the position is in controversy. There is no basis for a reasoned ruling on a case to answer unless when the court is based with the typology of a motion of no case to answer. However, as the decisions by the various courts can attest, exercise of judicial discretion covenants judges to give reasons for the decisions which affect rights of the parties before those forums.
5. In the case at bar, I have reviewed the evidence of the four prosecution witnesses in their quest to discharge the burden of proof vested in the prosecution on the allegations made against the accused person. The central issues which are captured by the witnesses as it relates to this offence, the



foundation is traceable to a fight between the accused and the deceased. The other significant factor is about the relationship between the accused and the deceased generally pointing to the direction that they cohabited together as husband and wife but seems not to have been blessed with any children. I am of the considered opinion that at this juncture, there is sufficient evidence as adduced by the prosecution to establish a prima facie case for this court to give the accused a chance to tell his story on the events of the 16th December, 2022 at Lokitela village. As a consequence of this decision, his legal counsel shall take instructions for the defence to be admitted on the 2nd May, 2025.

DATED AND SIGNED AT ELDORET THIS 29TH DAY OF APRIL, 2025

.....

R. NYAKUNDI

JUDGE

