



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kibet (Criminal Case E036 of 2022)
[2025] KEHC 5333 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5333 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E036 OF 2022
RN NYAKUNDI, J
APRIL 29, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

COLLINS KIBET 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 6th day of December, 2022 at Kaptoros village, Turesia Sub-Location, Keiyo South Sub-county of Elgeyo Marakwet, murdered Benson Kipchirchir Kiprono Alias Shalo.
2. The elements expected to be proven by the state include the following:
 - i. The fact of death
 - ii. The fact that the deceased's death was caused by an unlawful act or omission.
 - iii. That the accused committed the unlawful act which caused the death of the deceased; and
 - iv. That the accused had malice aforethought.
3. The prosecution adduced evidence from six witnesses to discharge the burden of proof of beyond reasonable doubt. This decision at half time submissions is in terms of the provisions of section 306 of the *Criminal Procedure Code* which binds the court to make a finding as to the existence of the prima facie case for the accused person to be called upon to state his defence or in the alternative, a finding of a motion of no case to answer which then will entitle the accused person on acquittal of any wrong doing against his/her victim. The guiding principles are well articulated in the following cases:
 - a. *Republic v Abdi Ibrahim Owl* [2013] eKLR



- b. [*Ronald Nyaga Kiura v Republic*](#) (2018) eKLR
 - c. *Ramanlal Trambaklal Bhatt v R* [1957] EA 332 at 334 and 335
4. Under Kenyan [*Constitution*](#), every person is presumed innocent until his guilt is proved beyond reasonable doubt as provided for under Art. 50(2)(a) of the supreme law. The legal burden of proving the guilt of an accused person rests on the prosecution and does not shift throughout the trial. At the close of the case for the prosecution, it is the duty of the trial court to examine and assess the evidence introduced 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 electing to keep silent. In the event he is called upon to state his defence as provided for under section 306 of the [*Criminal Procedure Code*](#), besides adducing evidence from himself/herself, he/she can also call witnesses to rebut the prosecution case. In the case of a motion of no case to answer is established by the court, the charge indictment shall be dismissed and forthwith accused discharged against any allegations. Essentially, there are two perspectives under section 306 of the [*Criminal Procedure Code*](#). First and foremost is the existence of a prima facie case, as defined in the above cited cases in which a trial court has to make a finding whether the prosecution has surmounted the hurdles of proving the elements of the offence. It becomes rather apparent that from the above authorities, if the threshold of a prima facie case fails, it follows that a motion of no case to answer succeeds, requiring an accused person to be acquitted. The English case of *R v. Galbraith* (1981) 1 WLR 39 lays down the test which a trial court must take into account when dealing with submissions at half time stage of the trial:

“the difficulty for the court arises when there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence where the judge comes to the conclusion that the prosecution’s evidence taken at its height, is such that a jury properly directed could not properly convict upon it, it is his/her duty upon a submission being made to stop the case. However, the prosecution evidence is such that its strength or weaknesses depend on the view to be taken for a witness reliability or other matters which are generally within the province of the jury and where on one possible view of the facts, there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judges should allow the matter to be tried by the jury or in case there is no jury system, a trial by the appointed judge.”

5. The proper approach of a judge or magistrate sitting without a jury system does not therefore involve the application on a prima facie case or a motion of no case to answer, a different test from what is stated in the above case. It is important to note that a judge should not ask himself the question at the close of the prosecution’s case: “Do I have a reasonable doubt?” the question that he/she should ask is whether he/she is convinced that from the facts of the case and the admissible evidence, a determination on a prima facie case carries more weight than that of a motion of no case to answer.
6. Given that legal background, it is worthy to mention that the prosecution case is based upon the evidence of six witnesses. The surrounding circumstances as stated by PW1-PW6 revolve around a quarrel and a fight which ensued between the accused and the deceased and on the 6th December, 2022 at Kaptoros village. It is on record that PW1 on the material day, the accused went to his house and requested his company to their homestead. That on arrival at that homestead, he found one Irene and Benson, the deceased herein quarrelling. This quarrel between the deceased and the mother escalated to a level in which the accused joined in and simultaneously, he armed himself with an axe which he used as the murder weapon to inflict the fatal injuries, against his victim, the deceased. This evidence does manifest itself on assessment of the testimony given by PW2 and PW3. It was also the case of



the prosecution that the deceased's body was picked from the scene of the murder and taken to Moi Teaching and Referral Hospital in which a post mortem conducted showed severe head injury due to multiple cut trends on the left parietal and occipital regions caused by a sharp object.

7. In the instant case, a review of the prosecution evidence 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 render these proceedings to proceed to the next stage which is legally acceptable of placing the accused on his defence. As a consequence of which the party be informed to prepare himself to give evidence in rebuttal of the prosecution case on the 12. 5. 2025.

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

R. NYAKUNDI

JUDGE

In the Presence of

Lugwe Advocate for the Accused

Accused

