



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Ogandi (Criminal Case 3 of 2020)  
[2025] KEHC 12323 (KLR) (28 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12323 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE 3 OF 2020**

**FR OLEL, J  
AUGUST 28, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BRIAN EBOSO TSALA OGANDI ..... ACCUSED**

**RULING**

**A. Introduction**

1. The accused, Brian Eboso Tsala Ogandi, is charged with the offence of Murder Contrary to section 203 as read with section 204 of the Penal Code. It is alleged that on the night of 5<sup>th</sup> February, 2020 at Premier Bag Estate, in Juja Sub-County within Kiambu County, he murdered Samuel Mwethia Ngure.
2. The gist of the Prosecution's evidence was that the deceased sustained fatal injuries within Premier Bag Estate caused by the accused person and others not before court. PW1 Alexias Mulwa, a Supervisor at Marshalls Guard Limited, which was the Security Company providing guarding services within the said estate, testified that on the material night, he was called and informed of an incident where a thief had been arrested within the said estate. He rushed to the scene and found the deceased lying on the ground and was forming from the mouth. They scurried around and eventually managed to take him to hospital, via Juja Police Station, where he was pronounced dead on arrival.
3. PW2 Victoria Wanjiku Kimani confirmed that the deceased was her husband and identified his body at General Kago Hospital-Mortuary on 10.02.2020 before the post-mortem was carried out by PW3 Dr.J. Mathaiya. The said doctor undertook the post-mortem exercise and confirmed that the deceased died as a result of head injury caused by blunt force trauma. He produced the post-mortem report dated 10.02.2020 as Exhibit 1.
4. PW4 Chief Inspector Peter Kibiru confirmed that he was the Investigating Officer of this case. On the early morning of 05.02.2020, the accused person had made a report at Juja Police Station that the



deceased was amongst a group of thieves who had stolen four (4) of his rabbits and two (2) chicken, but the same was not recorded in the occurrence book, as he did not come to the police station with the suspect. A police motor vehicle was later dispatched to go pick up the suspect, and when they came back, it was noted that suspect was severely injured and was rushed to Gachororo Health Centre, where he was pronounced dead on arrival. Based on the circumstances of his death, PW4 decided to detain the accused person and two other suspects for further questioning.

5. On interrogation, the accused person claimed that four (4) assailants had broken into his home at around midnight and had managed to steal his rabbits and chicken. He had woken up and managed to arrest one of the assailants, who could not run away as he was drunk. The said arrested thief was the accused person. His version of events was, however, disputed by his neighbour, Mr. John Mungai, who heard commotion and also woke up to check what was going on.
6. The said Mr. John Mungai confirmed that he found the accused person alone with the deceased, who by then was lying down on the ground unconscious. The accused had told him that the deceased was a thief, and he helped the accused to tie him up using a rope. He further confirmed that he was the accused's immediate neighbour and had never seen him rearing rabbits or chicken. The accused person had also requested him to help him move the deceased body away from the incident scene so as to cover up where he had been arrested/injured. This evidence was also corroborated by Mr. Joseph Wariba, who was a duty security guard and had arrived at the scene only to find the two persons.

## **B. Determination**

7. I have considered the evidence so far adduced from the Prosecution's side. The issue before me at this stage is to determine whether the said evidence warrants calling upon the accused to defend himself. In other words, does the accused have a case to answer? In *Republic vs. Abdi Ibrahim Owl* [2013] eKLR a prima facie case was defined as follows: -

“Prima facie” is a Latin word defined by Black’s Law Dictionary, 8<sup>th</sup> 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 defence 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 defence.”



8. In Ronald Nyaga Kiura vs. Republic [2018] eKLR, it is stated as follows:

“It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that prima facie 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. 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. This is well illustrated in the cited Court of Appeal case of RAMANLAL BHAT -VS- REPUBLIC [1957] EA 332. At that stage of the proceedings, the trial court does not concern itself to the standard of proof required to convict, which is normally beyond reasonable doubt. The weight of the evidence however, must be such that it is sufficient for the trial court to place the accused to his defence.”

9. Having considered the material placed before me, I find that there is material evidence placing the accused person at the scene of crime and possibly had a hand in the injuries the deceased sustained. I am satisfied that the Prosecution has established a prima facie case for the purposes of a finding that the accused has a case to answer. As to whether the said evidence on record meets the threshold for convicting the accused is a matter that will have to be considered at the end of the trial.

9. I accordingly place the accused on his defence.

9. It is so ordered.

**RULING READ, SIGNED AND DELIVERED IN OPEN COURT AT KIAMBU THIS 28<sup>TH</sup> DAY OF AUGUST, 2025.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

**DELIVERED ON THE VIRTUAL PLATFORM, TEAMS, THIS 28<sup>TH</sup> DAY OF AUGUST, 2025.**

In the presence of;

..... Accused

.....For O.D.P.P

.....Court Assistant

