



**Eyanae Alias Kiki v Republic (Criminal Case E002 of 2022)
[2024] KEHC 575 (KLR) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 575 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL CASE E002 OF 2022
RN NYAKUNDI, J
JANUARY 31, 2024**

BETWEEN

ALBATROS EYANAE ALIAS KIKI ACCUSED

AND

REPUBLIC PROSECUTOR

RULING

1. On 5th January, 2022 the Director of Public Prosecution preferred a charge of murder contrary to section 203 as read with section 204 of the [penal code](#) against the accused person Albatros Eyanae alias Kiki. The brief particulars being that on the 9th day of November, 2021, at Sanya area within Kakuma Township in Turkana West sub-county within Turkana County murdered Jackline Wori Juma. On arraignment the accused pleaded not guilty necessitating the case to proceed to full trial in which the prosecution summoned eight (8) witnesses to disapprove his innocence beyond reasonable doubt.
2. At the close of the prosecution case, both counsels elected to leave the matter to the court for purposes of making determination on existence of a prima facie case or on a motion of no case to answer as provided for under section 306 of the [criminal procedure code](#). The real question is to decide whether there is submitted evidence on which a reasonable court properly directing its mind might convict the accused in absence of any evidence in rebuttal. What that means is where at the close of the prosecution case a prima facie case has not been made out the accused will be entitled to an acquittal. See (*Wabiro alias Musa v Republic* [1960] EA 184). For the accused to be required to offer his defence the quality of the prosecution evidence must satisfy the essentials of the offence of murder under section 203 of the penal code as follows;
 - a. That the deceased Jackline Wori Juma is dead.
 - b. That her death was through an unlawful act or acts of omission of the accused person.



- c. That in causing death the accused was actuated with malice aforethought as defined in section 206 of the penal code.
 - d. That the accused person was positively identified and placed at the scene.
3. In *Republic v Carrol* [2002] 213Cr.635 the court remarked as follows;

A criminal trial is an accusatorial process in which the power of the state is deployed against an individual accused of crime. Many of the rules that have been developed for the conduct of criminal trials therefore reflect two obvious propositions. That the power and resources of the state as prosecutor are much greater than those of the individual accused and that the consequences of conviction are very serious. Blackstone's precept "that it is better that ten guilty persons escape, than that one innocent suffer"[16] may find its roots in these considerations.

4. Simply putting it in another way a submission on a no case to answer connotes that the prosecution tendered no credible evidence on which the court will convict the accused at the end of the trial. For our case it is to juxtapose the facts disclosed by the prosecution from the evidence of the eight (8) witnesses and the documentary evidence produced in support of the charge of murder.
5. I bear in mind at this stage that the court should avoid to express any opinion on the evidence likely to prejudice the intended defence case. All that is necessary is to review the exacting evidence presented by the prosecution as legally admitted that implicates the accused person with commission of the alleged offence. In my considered view from the totality of the evidence led against the accused person I am satisfied that he be placed on his defence to offer some explanations or rebut the evidence so far given on oath by the prosecution witnesses.
6. This finding is consistent with the distinct meaning of *prima facie* case in law as reflected in this statement;

[There are two senses in which court use (the concept of *prima facie*). The first is in the sense of a plaintiff's/or prosecution producing evidence sufficient to render reasonable conclusion in favour of the allegations in the claim or in the charge sheet. In the common instance of this use of the concept, it means plaintiff or the prosecution evidence is sufficient to allow the defendant to offer evidence in rebuttal as a rejoinder to the case.

In the second sense of the concept, however courts use "*prima facie*" to mean not only that plaintiff's/or prosecution's evidence would reasonably allow the conclusion the plaintiff or prosecution seeks to secure judgment in terms of section 107(1), 108 and 109 of the [evidence Act](#). Further also that the plaintiff's or prosecution evidence compels such a conclusion if the defendant produces no evidence to rebut it.

7. It is in this sense I rule in favour of the prosecution to call upon the accused to state his defence in accordance to sections 306(2) as read with 307 of the [CPC](#).

DATED, SIGNED AND DELIVERED THIS 31ST DAY OF JANUARY, 2024.

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R NYAKUNDI
JUDGE

In the presence of: -



Mr. Kakoi for the State

Accused person present

