



**Republic v Muhumed (Criminal Case E003 of 2022)  
[2024] KEHC 626 (KLR) (30 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 626 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E003 OF 2022  
JN ONYIEGO, J  
JANUARY 30, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**AHMED MOHAMED MUHUMED ..... ACCUSED**

**RULING**

1. The accused person herein is 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 November 1, 2021 at Athinasyar village in Bullagolol Location in Bura East Sub County within Garissa County, murdered Ismail Dubow Hassan. Upon arraignment before court, he pleaded not guilty and a plea of not guilty was accordingly entered.
2. The case subsequently proceeded to full trial with the prosecution calling seven (7) witnesses in support of its case. Under section 306 of the Criminal Procedure Code cap 75 Laws of Kenya, this court has a duty, upon close of the prosecution’s case, to make a ruling or a decision on whether an accused person has a case to answer or not. Section 306(1) provides that, when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is no evidence that the accused person committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.
3. Section 306(2) on the other hand states that, when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is evidence that the accused person committed the offence, the court shall proceed to put the accused to his defence and whereby the accused is supposed to present evidence in his defence.
4. 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



person to give his defence. 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].

5. However, it is trite that where the court is not acquitting the accused person at the close of the 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. I have considered the evidence tendered by the prosecution in this matter as required of this court and from the entirety of the said evidence, it is my view that the prosecution has made a prima facie case against the accused person to warrant him being put on his defence. He therefore has a case to answer hence put on his defence. He shall be at liberty to; give sworn testimony, if he wishes in which case he shall be subjected to cross examination by the prosecution; give unsworn testimony in which case he shall not be subjected to cross examination and; lastly, he can choose to keep quiet. In either option, he shall be at liberty to call witnesses.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF JANUARY 2024**

**J. N. ONYIEGO**

**JUDGE**

