



**Director of Public Prosecutions v Kalung'e (Criminal Case
29 of 2017) [2024] KEHC 1728 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1728 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 29 OF 2017
TW CHERERE, J
FEBRUARY 22, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS PROSECUTOR

AND

TONNY MANYARA KALUNG'E ACCUSED

RULING

1. Tonny Manyara Kalung'e (Accused) is charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#).

The particulars of the charge are that on 27th March, 2017 at about 13.30 hrs at Kathelwa sublocation within Igembe Central sub-county within Meru County jointly with others not before the court murdered Philip Mutuku Mathias

2. Accused person denied committing the offence and the prosecution called a total of two (2) witnesses in support of their case.
3. Section 306(1) of the [Criminal Procedure Code](#) provides as hereunder:

When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused 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.



4. At this stage, the court is being called upon to decide whether or not the prosecution has made out a prima facie case against the accused persons that would warrant this court to call upon them to give their defence. In *Republic v 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*, 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 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.”

5. I have considered the evidence tendered by the two (2) prosecution witnesses and I am persuaded that a prima facie case has been established that warrants this court to call upon Accused to defend himself
6. Accordingly, the Accused persons will proceed as provided under Section 306 (2) of the *Criminal Procedure Code*.

DATED THIS 22ND DAY OF FEBRUARY 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

Accused - Present

For Accused - Ms. Asuma for Mr. Mutembei Advocate

For the State - Ms. Rita (PC-1)

