



**Republic v Nyaoke & another (Criminal Case 7 of 2019)
[2024] KEHC 6034 (KLR) (29 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6034 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE 7 OF 2019
RE ABURILI, J
MAY 29, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ABISAYE ODONGO NYAOKE ALIAS SIAYA 1ST ACCUSED

SYLVESTER OYOO OGADA 2ND ACCUSED

RULING

1. The two accused persons herein Abisaye Odongo Nyaoke alias Siaya and Sylvester Oyoo Ogada are jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. The charge is as per amended Information for murder dated 6th February, 2019 whose particulars are that on the night of 14th and 15th January, 2019 at Ramogi sub location, Nyakach Sub County within Kisumu County, jointly with others not before court, murdered one, Kevin Onyango Abuto alias Dadi.
3. The two accused persons denied the charge. The prosecution called 9 witnesses and closed its case on 14/5/2024.
4. The defence counsel stated that he did not wish to file any submissions. The court therefore reserved the matter for ruling on whether the accused persons herein have a case to answer.
5. Having considered the testimony of all the 9 witnesses cumulatively, and without delving deep into the evidence of each witness and the merits thereof, the question is whether a prima facie case has been established against the accused persons to warrant them to be placed on their defence.



6. The [Oxford Companion of Law at pg 907](#) defines “*prima facie*” in the following terms:

“A case which is sufficient to all an answer while *prima facie* evidence which is sufficient to establish a fact in the absence of any evidence to the contrary is not conclusive.”
7. The Court of Appeal in [Anthony Njue Njeru vs. Republic](#) [2006] eKLR held that:

“Having expressed himself so conclusively we find it difficult to understand why the Learned Judge found it necessary to put the Appellant on his defence. Was there a *prima facie* Case to warrant the trial Court to call upon the Appellant to defend himself? It is a cardinal principle of law that, the onus is on the prosecution to prove its case beyond reasonable doubt and a *prima facie* case is not made out if at the close of the Prosecution case, the case is merely one, ‘Which on full consideration might possibly be thought sufficient to sustain a conviction’

Taking into account the evidence on record, what the Learned Judge said in his Ruling on no case to answer, the meaning of a *prima facie* Case as settled in *Bhatt’s Case*(supra), we are of the view that the Appellant should not have been called upon to defend himself as all the evidence was one record. It seems the Appellant was required to fill in the gaps in the Prosecution case.”
8. There is a danger in making definitive findings at this stage, especially where the Court finds that there is a case to answer. As was appreciated by Trevelyan and Chesoni, JJ in [Festo Wandera Mukando v The Republic](#) [1980] KLR 103 that:

“...we once more draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgement. Where a submission of “no case” is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the count or counts concerned.”
9. Applying the principles espoused in the above decision and having considered the evidence adduced by the prosecution witnesses, I am persuaded that a *prima facie* case has been established against both the accused persons herein to warrant them to be placed on their respective defences.
10. This is not to say that the accused persons are culpable but that at this stage, this court is not expected to find whether the prosecution has proved its case against the accused beyond reasonable doubt.
11. The accused persons remain innocent until proven guilty and their rights under Article 50(2) of the [Constitution](#) are guaranteed.
12. Accordingly, Abisaye Odongo Nyaoke alias Siaya and Sylvester Oyoo Ogada are hereby found to have a case to answer and are hereby placed on their defence.
13. The provisions of Article 50(2) (i) (k) (l) of the [Constitution](#) as read with Section 306(2) of the [Criminal Procedure Code](#) are hereby complied with and read out to both the accused persons in the presence of their counsel.
14. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 29TH DAY OF MAY, 2024

R. E. ABURILI



JUDGE

