



**Republic v Olang'o (Criminal Case E024 of 2023)
[2024] KEHC 6051 (KLR) (28 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6051 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E024 OF 2023
RE ABURILI, J
MAY 28, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMUEL OGOLA OLANG'O ACCUSED

RULING

1. The accused person in this case is Samuel Ogola Olango. He is charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. Particulars of the information dated 11th October 2023 are that on the 19th day of September, 2023, at Chulaimbo area in Kisumu West Sub-county within Kisumu County, the accused person murdered Peter Caleb Bwana.
3. The accused denied committing the offence and the prosecution had called 7 witnesses who have testified and exhibits produced.
4. The question now for determination is whether the prosecution has established a prima facie case against the accused person to warrant him to be placed on his defence. In *Bhatt vs Republic* [1957] EA 332 – 335 it was stated as follows:
 - “(i) 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, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction.
 - (ii) The question whether there is a case to answer cannot depend 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."

5. However, at this stage, the prosecution is not being called upon to have proved its case against the accused person beyond reasonable doubt. The measurement is *prima facie* case. In the case [Ronald Nyaga Kiura vs. Republic](#) [2018] eKLR it was stated that:

"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 a *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 v 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."

6. I have perused the evidence adduced by the seven (7) prosecution witnesses and without delving deep into the merits thereof, I am satisfied that a *prima facie* case has been established against the accused person to warrant him to be placed on his defence.
7. The accused person's rights under Article 50 of the [Constitution](#) are guaranteed and cannot be limited.
8. Accordingly, Samuel Ogola Olango is hereby found with a case to answer and is hereby placed on his defence.
9. 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 read out and explained to the accused person in Kiswahili language which he understands best.
10. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 28TH DAY OF MAY, 2024

R. E. ABURILI

JUDGE

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