



**Republic v Muse (Criminal Case E007 of 2021)  
[2024] KEHC 14298 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14298 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E007 OF 2021  
JN ONYIEGO, J  
NOVEMBER 14, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MOHAMUD ALI MUSE ..... ACCUSED**

**RULING**

1. The accused person herein is charged of murder contrary to section 203 as with section 204 of the Penal Code. The particulars of the offence are that on 10<sup>th</sup> October 2021 at Ifo refugee camp within Dadaab Sub-County of Garissa County, he Murdered Fatuma Hassan Abdi.
2. He was arraigned before court and upon the charges being read to him, he pleaded not guilty hence a plea of not guilty entered.
3. The matter proceeded to full hearing wherein the prosecution called a total of eight (9) witnesses in order to prove its case. At the close of the prosecution case, both counsel opted not to submit and instead urged the court to deliver its ruling based on the evidence tendered by the prosecution.
4. It is trite that in a criminal trial, once the prosecution closes its case, the court is call upon to make a finding whether the evidence tendered meets the threshold of a prima facie case to enable the court put accused on his defence. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court of law to return a guilty verdict even if the accused opts to remain silent.
5. Section 306 (1) of the Criminal Procedure Code does provide as follows:

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 the 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.”

6. Having considered the testimonies of the prosecution witnesses, the question that begs an answer is whether the evidence tendered establishes a prima facie case against the accused. In *Republic vs Abdi Ibrahim Owi* [2013] eKLR, the court defined a prima facie case as follows:

“Prima facie’ is a latin word defined by Black’s Law Dictionary 8<sup>th</sup> Edition as, “sufficient to establish a fact or raise presumption unless disapproved or rebutted”. ‘Prima facie’ is defined by the same dictionary as “the establishment of a legally required rebuttable presumption.”

[Also see *Ramanlal Trambaklal Bhatt vs R* [1957] E.A 332].

7. Guided by the above case law, can this court on the basis of the evidence so far tendered by the prosecution properly directing itself to the law and evidence tendered convict, if the accused chooses not to give any evidence?

8. In the case of *Ronald Nyaga Kiura vs Republic* [2018] eKLR, the court held:

“It is important to note that at the close of the Prosecution case, what is required in law at this stage is for the trial court to satisfy itself that a prima facie case 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...”

9. The trial court is however cautious that at this stage, it should not make definitive findings should it conclude that the accused has a case to answer. In *Festo Wandera Mukando vs Republic* [1980] KLR 103, the court held thus:

“...we 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, and an extreme case, may require an appellate court to set aside an otherwise sound judgment. Where a submission of “no case” to answer 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.”

10. Without delving into the depths of the witnesses’ testimonies, I am satisfied that the Prosecution more particularly through the testimony of pw6, pw7, pw8 and pw9 and the available circumstantial evidence have established a prima facie case against the accused person to warrant him being placed on his defence. I therefore find that the accused herein has a case to answer and he is therefore call upon to tender his defence.

11. Accordingly, section 211 of the CPC shall be complied with to the extent that; accused shall be at liberty to give sworn testimony in which case he will be subjected to cross examination by the prosecution; Alternatively, he can opt to give unsworn testimony to which he will not be subjected to cross examination. Third option, he can choose to keep quiet. In either option, he shall be at liberty to call witnesses.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 14<sup>TH</sup> DAY OF NOVEMBER 2024.**

**J. N. ONYIEGO**

**JUDGE**

