



**Republic v Khatimba (Criminal Case 32 of 2019)  
[2024] KEHC 11302 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11302 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 32 OF 2019  
SC CHIRCHIR, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**FELIX JUMBA KHATIMBA ..... ACCUSED**

**RULING**

1. The accused herein was charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars of the charge were that on 16<sup>th</sup> May 2019 at Sabane sub- location , Iguhu location of Kakamega sub- county within Kakamega county , murdered Stephen Lukhole
3. Four witnesses testified on the part of the prosecution with the last witness taking the stand on 3.10.2022. After several adjournments, most of which were occasioned by the prosecution, the prosecution was denied an adjournment on 18/9/2024.
4. The prosecution opted not to make a decision on the way forward and left the decision to the court. The prosecution’s case was ordered closed. This ruling is a determination whether the prosecution has established a prima facie case based on the evidence so far presented.
5. In the case of *Ramanlal Trampaklal Bhatt versus Republic* (1957) EA 332, a prima facie case was defined as ‘one on which a reasonable tribunal properly directing its mind to the Law and Evidence would convict if no explanation is offered by the defence’.
6. The prosecution called a total of four witnesses. I have considered their testimonies . The first prosecution witness was called by the deceased’s brother. When he got to the scene he found the deceased dead. The 2<sup>nd</sup> witness was woken up in the morning by one Jane Masitsa and told there was a body lying near his gate .The 3<sup>rd</sup> witness was a brother to the deceased. He told the court that the



deceased left home at about 4pm on the material date. The following day in the morning, he received a call informing him that the deceased had been killed and his body was on the road. The 4<sup>th</sup> witness also got news the morning following the incident. She too was told about the incident she went to the scene and found the body of the deceased.

7. Thus none of prosecution witnesses witnessed the killing of the deceased. All the 4 witnesses were called to the scene after the event. They could not therefore connect the accused to the death of the deceased.
8. Further there was no circumstantial evidence submitted upon which the court could have used to determine the cause of death and the person responsible .
9. Further the post-mortem report was never produced and therefore there is no evidence that proved that the deceased had actually died and if dead, what actually caused his death.
10. Section 203 of the Penal Code defines Murder as follows “Any person who of malice aforethought causes death of another person by any unlawful act or omission is guilty of murder”
11. The necessary ingredients therefore are :- proof of death and who caused it, the person who caused death either by an act of commission or omission, and that the killing was accompanied by malice.
12. The prosecution evidence failed to prove any of the aforesaid ingredients consequently, it is my finding that the prosecution has failed to establish a prima facie case against the Accused to warrant him being placed on his defence.
13. He is consequently Acquitted under section 210 of the Criminal Procedure Code. He shall be set free forthwith unless otherwise lawfully held.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**S. CHIRCHIR**

**JUDGE**

**In presence of:-**

