



REPUBLIC OF KENYA



KENYA LAW
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**Republic (D.P.P) v Laku (Criminal Case 43 of 2016)
[2023] KEHC 965 (KLR) (17 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 965 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 43 OF 2016
PJO OTIENO, J
FEBRUARY 17, 2023**

BETWEEN

REPUBLIC (D.P.P) PROSECUTOR

AND

ANDREW SHITANDA LAKU ACCUSED

RULING

1. The accused faces the grave offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The facts of the offence are given to be that on the July 19, 2016 at Kambi ya Mwanza Centre, within Kakamega North sub-County, murdered Wcliffe Muganda Laku.
2. As early as September 18, 2017, the prosecution had intimated the intention to call at least five (5) witnesses who were said to be in court but on that day the matter was adjourned to enable parties attempt plea bargain. That attempt seems not to have been pursued or achieved and the matter was adjourned severally till the June 9, 2022 when a last adjournment was granted with directions that the next time the matter comes to court without prosecution witnesses the file would be closed.
3. Ultimately, the matter took off on the October 11, 2022 when PW1 Joseph Majimbo Shiranda gave evidence. He told the Court that on the July 19, 2016 he was at his butchery when at about 2.30 pm the deceased took a piece of meat and ran away with. The deceased was arrested by members of the public and taken to the police where he was re-arrested and put in custody.
4. Later the deceased mother visited the police and mediated with PW1 leading to the deceased being released. The witness went back to his business and did not see the deceased again that day but was later, on July 20, 2016, informed by two people who did not attend court as witnesses that the deceased had been killed by the accused.
5. When cross examined by the defence Counsel, he told the Court that he only heard of the death on July 20, 2016 having seen the deceased last on July 19, 2016. He denied meeting the deceased after



both parted from the police post. He denied knowing when, how and at what place the deceased died because he was not present.

6. The next and last witness to be called was No xxxx, PC Charles Ogada who had taken over the duty of an investigating officer and gave evidence based on perusal of the police file. He told the Court that the accused and the deceased were involved in a brawl over allegations that the deceased had worn the clothes belonging to the accused during which fight the accused was seen stabbing the deceased who was then rescued by good Samaritans. He said that the deceased died on July 20, 2016 at the hospital. The accused was later arrested and charged with the offence and an autopsy conducted later showed that the deceased died as a result of a sharp trauma to the thigh. That report was produced by consent hence it is not disputed that the death was occasioned by a sharp penetrating injury to the thigh.
7. The witness then went on to add that the fight was at a market centre, no murder weapon was recovered and that all witnesses including the accused mother were uncooperative and did not wish to give evidence in the matter on account of being related to the accused.
8. In very brief cross-examination the witness told the Court that the evidence he gave was purely from his perusal of the court file and that the accused was arrested at his grandmother's home.
9. With the two witnesses, the prosecution's case was closed hence the obligation of the Court to determine whether this far a prima facie case has been established.
10. A prima facie case is established if the evidence on record, is sufficient to achieve a conviction, without more, even if the accused was to choose to elect to remain silent¹. The prosecution is expected and obligated to lead evidence that creates a rebuttable presumption that the accused committed the offence charged². A trial court is not expected to place an accused person in his defence with the hope and expectation to clear or clarify doubt. The defence have no obligation to help the prosecution in its mandate by filling in the gaps which otherwise inflict reasonable doubt in the mind of the Court.
11. In the context of this matter, when the prosecution closed its case, there was no evidence, save for the inadmissible hearsay by PW2, to link the accused with the offence. Nobody saw the accused fight the deceased.
12. That PW2 said that he was informed by persons not called as witnesses, that accused stabbed the deceased on the thigh was of no worth because it was double hearsay. Double hearsay because the initial investigating officer was told by unknown people then the witness, PW2, relied on that information when he gave his evidence.
13. I find no scintilla of evidence to link the accused with the offence. To put him in his defence would be tantamount to calling upon the accused to assist court clarify all the outstanding questions including whether the accused was with the deceased on the date he suffered the injuries noted in the autopsy report. It would be an unlawful adventure to put the accused to his defence so that he says a thing or two that may clear the doubt and inject some clarity in the prosecution's case.
14. The Court finds that no prima facie has been established for which reason the accused is acquitted under Section 306 (1) of the [Criminal Procedure Code](#).
15. Let the accused be released forthwith unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED IN KAKAMEGA THIS 17TH DAY OF FEBRUARY 2023.

¹ [Republic -vs- Abdi Ibrahim Owl \[2013\] eKLR](#)

² [Bhatt -vs- Republic \[1957\] EA 332](#)



PATRICK J. O. OTIENO

JUDGE

In the presence of:

Ms. Namenge for the Accused

Ms. Chala for the Prosecution/State

