



**Republic v Amwoma (Criminal Case 24 of 2020)  
[2023] KEHC 25711 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25711 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL CASE 24 OF 2020  
JRA WANANDA, J  
NOVEMBER 24, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SAMUEL ATAKO AMWOMA ..... ACCUSED**

**RULING**

1. This is a Ruling on whether the accused person has a case to answer.
2. The accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars are that on 5/04/2020 at Bondeni village, Mwamba sub-location, in Lugari sub-County within Kakamega County he murdered one Joseph Muchiri.
3. From the record, the accused person was first presented before Court on 16/04/2020 before Sewe J. Mr. Ngigi Mbugua Advocate then came on record to represent him. The accused was then taken to the Moi Teaching and Referral Hospital where mental assessment was conducted and which certified him fit to stand trial. He eventually took plea on 23/04/2020. He denied the charge and a plea of not guilty was entered.
4. After further proceedings touching on various preliminary issues, including bail/bond, the hearing eventually commenced on 13/10/2021 before E. Ogola J who took the evidence of PW1 – PW7. Upon the Judge being transferred, I took over the matter and during taking of directions under Section 200(3) of the *Criminal Procedure Act*, the defence elected not to ask for recall of any witnesses and asked that the matter proceeds from where it stopped. I then took the evidence of PW8 after which the prosecution closed its case.
5. I am now to rule on whether the accused has a “case to answer”. In respect thereto, the defence filed its Submissions on 9/07/2023 while the prosecution filed on 12/07/2023.



6. Regarding the evidence presented, PW1, Joseph Mabonga testified that the he was a neighbour to the deceased, on 5/4/2020 he was with the accused at the accused's uncle's home when the deceased joined them at around 1 pm with a friend, the accused and the deceased began quarrelling, the deceased left but came back at around 7 pm with a rungu and a panga, the accused and the deceased began fighting, the accused took the panga from the deceased and cut the deceased thrice on the head thus killing him.
7. PW2, Jeremiah Kamau, testified that the deceased was his uncle, on 5/04/2020 at around 8.30 pm, PW1 appeared in his house and sought his help to take the deceased to hospital as the deceased had been slashed, he rushed to the scene with PW1 where he found the deceased already dead.
8. PW3, Shaban Bukolwe, testified that the deceased was his neighbour and the accused is his nephew, on the said date his caretaker called him at around 8 pm and told him that the accused had visited the home and that the deceased chased away the accused while armed with a panga and a rungu and that an argument had ensued, he proceeded to home but found that the deceased had been slashed and died.
9. PW4, Edwin Aluhaba, testified that he is the area Chief, on 5/04/2020 he received a call from an uncle to the accused informing him that the accused had slashed the deceased in PW3's compound and the deceased appeared dead, he then, in turn, informed the police and then went to the scene where he found the deceased lying dead in a pool of blood.
10. PW5, Chief Constable Joshua Orende testified that at the time of the incident he was the OCS Turbo Police Station, on 5/04/2020 he received a call from the duty officer informing him that someone had been killed, the initial information came from the Chief, he mobilized officers and went to the scene where they found the body lying down in a pool of blood. He stated further that from his interview of the witnesses he gathered that that the deceased met his death after being slashed with a panga by the accused after a quarrel, he arrested the accused at the scene and then arranged for the body to be transferred to the mortuary.
11. PW6, Margaret Wairimu Mwangi, testified that she is a daughter of the deceased, that she attended the post mortem and that the body had multiple cuts.
12. PW7, Corporal Benjamin Some, stated that he is the Investigating Officer. He testified that from his investigations, he gathered that the deceased met his death after being slashed with a panga by the accused after a quarrel. He then produced the alleged panga and also alleged photographs of the scene and the body.
13. PW8, Dr John Kiberenge Wanambisi, testified that he is the one who performed the post mortem on the body of the accused on 6/04/2020, the body had multiple cut wounds including on the head and which, he formed the opinion, were the cause of death. He then produced the Report.
14. At this stage, the Court is only considering whether the accused has "a case to answer" and which was described by G. Dulu J in the case of *Republic vs Joseph Shitandi & Another* (2014) eKLR as follows:
 

"A case to answer is a case where if the accused keeps quiet, the evidence of the prosecution should be such that a conviction will result."
15. The procedure in determining whether an accused has a case to answer was discussed in the case of *Republic vs Samuel Karanja Kiria* (2009) eKLR where J.B Ojwang J (as he then was) stated the following:
 

"The question at this stage is not whether or not the accused is guilty as charged but whether there is cogent evidence of his connection with the circumstances in which killing



of deceased occurred. That the concept of prima facie case dictates as a matter of law that an opportunity created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled ... The Court of Appeal in Criminal Appeal No. 77/2006 expressed that too detailed analysis of evidence stage at no case to answer stage is undesirable in the court is going to put accused on his defence as too much details in the trial court's ruling could then compromise the evidentiary quality of the defence to be mounted."

16. The trial Court is cautioned that at this stage, it should not make definitive findings should it conclude that the accused has a case to answer. In this regard, in *Festo Wandera Mukando vs Republic* [1980] KLR 103, E. Trevelyan J stated as follows:

"...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, in 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."

17. I have considered the evidence on record, the testimonies of the witnesses as set out above and, also the respective Submissions filed by the Prosecution and the defence. Without delving into the merits thereof, I only state my finding to be that the prosecution has established a prima facie case. Accordingly, I find that the accused person has a case to answer.

18. Pursuant to my finding above, the accused person is now informed of his rights under Article 50(2) (i) and (k) of *the Constitution* and also under Section 306(2) as read with Section 307 of the *Criminal Procedure Code* to address the Court. Accordingly, he is informed and it is explained to him, in the presence of his Advocate, that he has a right to address the Court either personally or by his Advocate and to give evidence on his own behalf or to give unsworn statements, and to call witnesses in his defence.

19. The accused person is therefore placed on his defence.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 24<sup>TH</sup> DAY OF NOVEMBER 2023**

.....

**WANANDA J.R. ANURO**

**JUDGE**

