



**Republic v Makali & another (Criminal Case E008 of 2023)
[2023] KEHC 27051 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27051 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E008 OF 2023
WM MUSYOKA, J
DECEMBER 20, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

FRANCIS HAMISI MAKALI 1ST ACCUSED

EMMANUEL ANDERA SIKUKU 2ND ACCUSED

RULING

1. This is a ruling as to whether the Republic has established a prima facie case against the accused persons, to warrant them making statements in defence.
2. I have seen the written submissions by the accused, dated November 7, 2023. They turn principally on the names that appear in the post-mortem form, Patrick Otieno Andera Makale and Patrick Otieno Makali, and they appear to suggest that there was inadequate identity of the person whose body was subjected to the autopsy, and, perhaps, there was inadequate proof that the deceased had died.
3. The deceased person, according to the charge sheet, is Patrick Otieno Makali. The part of the P3 Form filled by the police bears the name of Patrick Otieno Andera Makale, as the individual on whose body the police sought to have the post-mortem conducted. The initial name was indicated as Emmanuel Andera Sikuku, but Emmanuel and Sikuku were subsequently crossed out, and replaced with Patrick Otieno Makale, but Andera was not crossed out. The cancellations are countersigned.
4. Emmanuel Andera Sikuku is the 2nd accused herein, and his name appears to have had been written on the form by error, which was subsequently corrected, by the investigating officer, and the proper name inserted. The alterations have been countersigned to authenticate the changes.
5. The other alteration is at page 2 of the P3 Form. Above the name crossed out appears the name Patrick Otieno Makale. The alteration is countersigned by Dr. Nabuya, the medical officer who conducted the



post-mortem. This section of the form is filled by the medical officer, and he signed the form at the end, at page 3. The alteration is “owned” by Dr. Nabuya, and it confirms that the body that he conducted post-mortem on was that of Patrick Otieno Makale.

6. It is not disputed that the person who died was Patrick Otieno Makali. His killing happened in broad daylight, in the presence of witnesses, who saw as he breathed his last. The fact of his death, and the circumstances of the death, are well documented, and are not in doubt. As the alterations in the form have been authenticated, and as no objection to the production of the form was raised, the same cannot found basis for a finding that a prima facie case was not established.
7. Globally, looking at the evidence tendered by the Republic, in its totality, it is my finding that the prosecution has established a prima facie case against the accused persons herein, to support a finding that they have a case to answer, and to warrant their being put on their defence. I find that they have a case to answer, and I, accordingly, put them on their defence.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA
THIS.....20THDAY OF.....DECEMBER..... 2023**

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Chepkonga, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Were, Advocate for the accused persons.

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