



**Republic v Mboya & another (Criminal Case E029 of 2021)
[2022] KEHC 14352 (KLR) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14352 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL CASE E029 OF 2021
KW KIARIE, J
OCTOBER 26, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMUEL ODHIAMBO MBOYA 1ST ACCUSED

THEODOROSE GALLISAM MBOYA 2ND ACCUSED

RULING

1. Samuel Odhiambo Mboya and Theodorose Gallisam Mboya are charged with an offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. The particulars of the offence are that on the 13th day of September, 2019, at Kamser Seka in Rachuonyo North Sub County within Homa Bay County, jointly with others not before court murdered Benson Otieno Mboya.
3. After the family of Mboya had buried him on 19th November, 2019 a disagreement over whether the daughters of the deceased were entitled to inherit, arose. There were two camps; one was for the idea while the other was against.
4. Apparently, the deceased was in the group that supported the “girls” being included as heirs while the accused herein were in the other camp. When the deceased was manipulating the lock to one of the bedrooms to allow Beatrice Akello Mboya to gain access, he was attacked by the two accused and others not before court. Following the attack, he sought treatment. He was issued with a p3 form on which it was indicated that he sustained a painful swelling on the left chin. There was no other finding.
5. Benson Otieno Mboya the deceased herein died on 13th September, 2019. When the post mortem was conducted, Dr. Alex Barasa opined that the cause of death was bilateral haemothorax due to bilateral lung contusion secondary to blunt trauma. As rightly conceded by PC Igelan Hosea (PW6), there was



no nexus between the injuries sustained on 13th day of September, 2019 and what was observed as the cause of death.

6. In the *Black's Law Dictionary, 10th Edition* prima facie case is defined as follows:

"Prima facie case. (1805) I. The establishment of a legally required rebuttable presumption.
2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor."

7. The Court of appeal in the case of *Ramanlal Trambaklal Bhatt v. R* [1957] E.A 332 at 334 and 335, defined prima facie case as follows:

"It may not be easy to define what is meant by a "prima facie case", but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence."

8. Article 50 (2) (i) of *the Constitution* of Kenya provides:

(2) Every accused person has the right to a fair trial, which includes the right—

(i) to remain silent, and not to testify during the proceedings;

In the instant case, if the accused persons opt to exercise their constitutional right hereinabove stated, I cannot convict any one of them based on the evidence on record. This therefore means that the prosecution has not established a *prima facie* case against anyone them. I accordingly acquit each of them of the offence of murder under section 306 (1) of the *Criminal Procedure Code*. Each is set at liberty unless if otherwise lawfully held.

DELIVERED AND SIGNED AT HOMA BAY THIS 26TH DAY OF OCTOBER, 2022

KIARIE WAWERU KIARIE

JUDGE

