



REPUBLIC OF KENYA



**Republic & another v Ogesi alias Brown & 3 others (Criminal Case
3 of 2016) [2022] KEHC 16058 (KLR) (Crim) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 16058 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE 3 OF 2016**

**LN MUTENDE, J
NOVEMBER 30, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

REPUBLIC PROSECUTOR

AND

ALFRED MARANYA OGESI ALIAS BROWN 1ST ACCUSED

AMBANI AKASI ALIAS WASIWASI 2ND ACCUSED

MARIGO PROTUS SARARA 3RD ACCUSED

JULIUS OMANYO OCHIENG 4TH ACCUSED

RULING

1. The 1st, 2nd, 3rd and 4th accused, respectively, are council constables, ordinarily known as ‘city askaris.’ On the September 16, 2013, there was an altercation between the officers and hawkers within Nairobi Central Business District (CBD) that degenerated into serious scuffles. One of the hawkers, Irungu Kamau (Deceased) sought refuge at Nyams hotel but was pursued and viciously assaulted. Good Samaritans assisted his wife to take him to hospital.
2. On September 23, 2013, PW8 No 57107, Corporal Richard Ongera of DCI Kamukunji was assigned investigation duties following the death of the deceased. He took over the matter which was initially an assault case.



3. PW2 Dr Ndegwa Peter, conducted a postmortem examination on the body of the deceased and concluded that the cause of death was bleeding due to injuries in the wounds and blood vessels caused by blunt object which was consistent with assault.

4. At this stage, the court is required to establish if a *prima facie* case has been established requiring the accused to be placed on their defence. In the celebrated case of *Ramanlal Trambaklal Bhatt v Republic [1957] EA 332*, it was stated that:

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot argue that a *prima facie* case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggesting that the court could not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case, nor can we argue that the question whether there is a case to answer depends only on whether there is “some evidence irrespective of its credibility or weight sufficient to put the accused on his defence.”

ii. A mere scintilla of evidence can never be enough nor can any amount of worthless discredited evidence... It may not be easy to define what is meant by *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.” (Emphasis mine).

5. Evidence adduced establishes the fact of the deceased having entered Nyams hotel in an endeavor to hide. He was pursued by people who assaulted him using objects they were armed with. PW3 Peter Karanja Wainaina, saw a group of ten people who chased after the deceased, and on seeing him injured, he assisted him.

6. PW4 Edward Kibui Mute, one of the hawkers identified the accused as the officers who attacked the deceased on the fateful day at the hotel. Taking the evidence into consideration, I am satisfied that the prosecution has demonstrated a *prima facie* case against the accused as defined in the case of *Bhatt v Republic*. that requires them to address the court in their defence, pursuant to the provisions of section 306(2) of the *Criminal Procedure Code*. The manner in which they will render the explanation will be explained on the further hearing date.

7. It is so ordered.

WRITTEN, DATED AND SIGNED BY HON LADY JUSTICE L N MUTENDE, THIS 24TH DAY OF NOVEMBER, 2022.

L N MUTENDE

JUDGE

RULING DELIVERED BY HON. JUSTICE D O OGEMBO ON THIS 30TH DAY OF NOVEMBER, 2022.

D O OGEMBO

JUDGE

