



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Ashika (Criminal Case E137 of 2021)
[2022] KEHC 16934 (KLR) (23 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16934 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E137 OF 2021
WM MUSYOKA, J
DECEMBER 23, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

GEORGE MAKOKHA ASHIKA ACCUSED

RULING

1. I have gone through the record herein, and I also had the benefit of hearing and seeing all the witnesses testify herein. The case herein is founded on mere suspicion, none of the witnesses saw the accused assault the deceased herein, Tonadi Albert Makokha, and there is no circumstantial evidence, nor a dying declaration. It is trite that suspicion, however strong, cannot be a basis for a conviction.
2. The investigation officer himself, PW6, Police Constable No 111653 Jackson Kyalo, does not have faith in the case. He testified, on October 4, 2022, as follows:

“ Am the one who recorded the investigation diary. There was no evidence linking the accused to the murder. I had stated that the facts were weak, in my report. None of the witnesses saw the accused cut or kill the deceased. The accused was suspected because of the previous quarrels he had with the deceased. None of the witnesses saw the accused and the deceased together before his death ... Investigations are still going on at Lunza Police Station.”
3. Overall, a *prima facie* case has not been established against the accused person, to warrant his being put on his defence. I shall accordingly acquit him of the charge, under section 306(1) of the *Criminal Procedure Code*, cap 75, Laws of Kenya, of the murder, contrary to section 203, as read with section 204 of the *Penal Code*, cap 63, Laws of Kenya, of Tonadi Albert Makokha. He shall be set free from remand custody, unless he is otherwise lawfully held.



**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 23RD
DAY OF DECEMBER 2022**

WM MUSYOKA

JUDGE

Mr Erick Zalo, court assistant.

Ms Kagai, instructed by the Director of Public Prosecutions, for the republic.

Mr K'Ombwayo, advocate for the accused person.

