



**Director of Public Prosecution v Shikombe (Criminal Case
E131 of 2021) [2025] KEHC 1990 (KLR) (18 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1990 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E131 OF 2021
S MBUNGI, J
FEBRUARY 18, 2025**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION REPUBLIC

AND

KELVIN SHIKOMBE ACCUSED

RULING

1. The accused person KELVIN SHIKOMBE was charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. The particulars of the offence were that on the 26th day of October, 2021 at around 1500 hours at Emamule village, Shimanyiro Sub-Location, Shisele location of Kakamega South Sub-County within Kakamega County, unlawfully murdered Albert Shipuoni.
2. The matter proceeded to full trial and the prosecution called and relied on the evidence of six witnesses to prove their case.
3. PW1 Pricila Khaoya the Deceased's mother told the court that she was called and told her son was dead, she went and found him dead near the road but does not know how the deceased died.
4. PW2 Paulina Achitsa told the court that she was the one who called PW1 and told her about the deceased and that she learned about the death of the Deceased through a child who had gone visiting the village. She went and saw the body of the deceased where it was lying. She further told the court she don't know what happened to the deceased.
5. PW3 Goeffrey Okutwa told the court that on 26.8.2021 at about 1.00 Pm he was called by one Godfrey Shikanga who told him that the accused had hit the Deceased with a stone. He went to the scene , he saw the body of the deceased and one Clinton told him he saw the Accused and the Deceased fight, he saw the Deceased hit the Accused before the Accused took a stone and hit the Deceased on the head, he collapsed and died.



6. On cross-examination he told the court that Clinton told him that the Deceased was the first to hit the Accused using a forked stick and further he was given a slasher by the youth who had arrested the Accused, the youth told him that they recovered the slasher from the Accused.
7. PW4 Godfrey Shikanga told the court that on the material date 26.8.2021 at about 1.00Pm being the village elder received a called from a person whom he did not know informing him that there was someone dead on the road, he went to the scene and met youths who had arrested the Accused. The area chief was there he calmed the youth and handed over the accused to him whom he escorted to the office of the assistant chief. The chief called the police who came and collected the body of the Deceased and re-arrested the Accused.
8. PW5 Maurice Abakala Khamera told the court that on 26.8.2021 at about 2.00PM while at home he heard people crying, he decided to go and see what was happening, he found the deceased lying down dead. A boy called Clinton told him that the deceased had been beaten by the Accused while there the Accused was brought there by the youth.
9. On cross-examination he told the court that he saw blood oozing from the left side of the Deceased. The area was rocky but he could not say that the accused fell on the rocks and died.
10. PW6 No. 74425 Sgt. Michael Mesera attached at DCI Malinya testified on how the incident was reported and how investigations were done.
11. On cross-examination he said that the initial investigator Cpl. Mica Businei recommended the accused be charged for the offence of manslaughter for the death of the Deceased was as a result of a fight between the Deceased and the Accused who were said to be very good friends.
12. He further said that the murder weapon was not recovered neither were there any photographs taken at the scene. The slasher recovered from the Accused was not produced as an exhibit.
13. That was the prosecutions evidence.
14. At this stage the court is required to determine whether prosecution has established a prima facie case against the accused person to warrant this court to call upon the accused person to tender his defence.
15. A prima facie case is defined to mean a case where evidence adduced by the prosecution is sufficient enough to attract a conviction even if the Accused person elects to remain silent in his defence.
16. A prima facie case, it has been held severally by courts, is that is not one that must necessarily succeed. A prima facie case was defined in Republic v Abdi Ibrahim Owl [2013] eKLR as: "Prima facie" is a Latin word defined by Black's Law Dictionary, 8th Edition as "Sufficient to establish a fact or raise a presumption unless disproved or rebutted".
17. The same Black's Law Dictionary defines "Prima facie case" as "The establishment of a legally required rebuttable presumption."
18. In Ramanlal Trambaklal Bhatt v R [1957] EA 332 at 334 and 335, the court expressed itself as follows "Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the 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 would 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 agree 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". A mere scintilla of



evidence can never be enough: nor can any amount of worthless discredited evidence...It is 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.”

19. All the prosecution witnesses who testified, no one said that he/she saw the accused beating the Deceased. PW1 to PW5 to the court that one “Clinton” is the one who told them that he saw the Accused beat the Deceased with a stone and a result the Deceased collapsed and died.
20. This “Clinton” was not called as a witness yet from the story he was the star witness. The investigating officer nor the prosecutor never intimated to the court if there was any difficulty in availing the witness.
21. Without his evidence the prosecution case cannot go anywhere for the evidence of the other witnesses is merely hearsay evidence which is of no value.
22. The above analysis makes me conclude that the prosecution has failed to establish a prima facie case against the Accused person to warrant this court to put him on his defence therefore I enter a verdict of not guilty pursuant to the provisions of Section 306 of the Criminal Procedure Code. The Accused is set free unless lawfully held.
23. Right of Appeal 14 days

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 18TH DAY OF FEBRUARY, 2024.

S.N MBUNGI

JUDGE

In the presence of :

Mr. Osoro ODP, present

Mr Ondiek for the Accused, absent.

Court Assistant – Elizabeth Angong’a

