



**Republic v Dabasso (Criminal Case 23 of 2016)
[2025] KEHC 2182 (KLR) (Crim) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2182 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 23 OF 2016
K KIMONDO, J
FEBRUARY 20, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

ABDULLAHI WAKO DABASSO ACCUSED

RULING

1. The accused is charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. The Director of Public Prosecutions informs the High Court that on the night of 2nd and 3rd March 2016 at Kibera Highrise in Langata District within Nairobi County the accused murdered Robert Isaboke Ontiri.
3. He pleaded not guilty. The prosecution lined up fourteen witnesses. Eleven of them appeared before my predecessor, Wakiaga J. On 25th October 2022, and, pursuant to section 200 (3) of the [Criminal Procedure Code](#), the accused elected to proceed from where the matter had reached. I should add that PW11, who had been stood down earlier was recalled to the stand on 20th March 2024.
4. I am now called upon to determine whether that corpus of evidence is sufficient to place the accused on his defence.
5. Learned counsel for the defence, Mr. Otieno, filed detailed submissions with a list of authorities dated 15th July 2024. The Republic equally lodged submissions dated 10th September 2024.
6. The accused relied on a number of precedents including *Bhatt v Republic* [1957] E.A. 332, *Republic v Raphael Wachira & another*, Nyeri High Court Criminal Case 4 of 2011 [2016] eKLR, *Pius Arap Maina v Republic*, Eldoret High Court Criminal Appeal 247 of 2011 [2013] eKLR, *Martin Karugu Nganga v Republic*, Kajiado High Court Criminal Appeal 20 of 2015 [2020] eKLR. It was submitted



that the evidence does not meet the required standard of proof; and, accordingly, the accused should be acquitted at this early stage.

7. But according to learned counsel for the Republic, Ms. Kigira, there is sufficient direct and indirect evidence linking the accused to the homicide; and, that on the totality of the evidence, the accused has a case to answer.
8. My finding is as follows. It bears repeating that the accused is still deemed innocent at this stage. Furthermore, the inquiry at this juncture is merely to establish if a prima facie case has been made out requiring a rebuttal from the accused.
9. From the evidence of Patricia Ndunge Ndida (PW14), the deceased, who was a police officer, was their regular patron at a pub styled Jates Bar in Highrise Area. At about 23:00 hours, a Somali man knocked on the door enquiring why the bar was open past hours. Another hard knock followed. As the manager opened the door, the intruder pushed to gain access. She later heard a gun being cocked and a shot fired.
10. As she left the bar later between midnight and 00:30 hours, she heard some screams. A co-worker informed her that the deceased was shot. She saw him being removed from a ditch with a gun-shot wound to the forehead.
11. According to Kennedy Muya (PW1), he knew both the accused and the deceased. On the fateful night, the accused called him requesting to be driven to his lodgings at Capitol Hill Police Station. PW1 picked him up at Dubai Pub but along the way, the accused insisted on making a stop at Jates Bar. The bar was closing and someone pushed the accused out. PW1 saw the the accused fall and drop his gun.
12. PW1 later gave a lift to both the accused and the deceased from the bar. But that when the accused realized the deceased was also in the car he insisted that the deceased must disembark. The deceased declined. PW1 stopped the car on instructions from the accused. The accused alighted and opened the passenger door where the deceased was seated.
13. The two officers got out of the car. An argument ensued and he saw both officers, who were drunk, draw their guns. He left them on the roadside. A few metres away, he heard a shot ring out. He saw two people fall into the trench. He then saw the accused climb out of the ditch.
14. Sergeant Bernard Orawo (PW5) and his colleagues, S. Sgt Muchiri (PW8) and A.P. Tirop, found the deceased at the scene. He had a bloodied forehead and still breathing but could not move or talk. They took him to Kenyatta National Hospital where he later died. They also recovered from the scene the deceased's Ceska Pistol S. No. 6408 containing 9 live ammunitions (exhibit 1) and a Techno cell phone.
15. On 3rd March 2016, the accused surrendered his firearm, a Ceska Pistol S. No. F6060 (exhibit 8) to his colleague, Cpl. Godfrey Muya (PW2). The accused was later arrested at the police lines at Capitol Hill.
16. From the arms movement register and relevant entries (exhibits 10 (a & b)) and the combined evidence of Snr. Sgt. Catherine Ndegwa (PW13), the accused had been assigned anti-mugging duties (SPIV) on the material night. From the evidence of Sgt. Peter Kosgey (PW11) at the time the accused firearm was assigned, it contained 15 rounds of ammunition but when it was surrendered, one round was missing (exhibits 9 (i-xiv) & 11).
17. I have also paid heed to the evidence of Chief Inspector James Onyango (PW12) relating to the ballistics examination of the two firearms and the respective ammunition.
18. The death of the deceased is no longer in doubt. It was confirmed by his father, Samuel Isaboke (PW3). There is also the emphatic post-mortem report dated 14th March 2016 (exhibit 3) produced by Dr.



Kanyi Gachie (PW6). The pathologist concluded that the cause of death was “due to single bullet perforating gunshot wound to the head”.

19. Applying the precedents in *Bhatt v Republic* [1957] E.A. 332 and *R v Kipkering arap Koske & another* 16 EACA 135 (1949); and, upon the digest of the evidence of all the fourteen witnesses, I find that the Republic has established a prima facie case against the accused.
20. Accordingly, under the provisions of section 306 (2) of the *Criminal Procedure Code*, I now place the accused on his defence.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF FEBRUARY 2025.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

Accused.

Mr. Lumumba holding brief for Mr. Otieno for the accused instructed by Brian Otieno & Company Advocates.

Mr. E. Ombuna, Court Assistant.

