



**Republic v Maigwa (Criminal Case 36 of 2017)  
[2025] KEHC 1659 (KLR) (11 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1659 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE 36 OF 2017  
PN GICHOHI, J  
FEBRUARY 11, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**DANIEL THIONGO MAIGWA ..... ACCUSED**

**RULING**

1. The accused person herein 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 are that on the 10<sup>th</sup> day of August 2017 at Dundori Centre in Nakuru North Sub County within Nakuru County, he murdered Gladys Muthoni.
2. He denied the charge and the matter proceeded for hearing with the Prosecution calling seven (7) witnesses in support of its case.
3. After close of its case, Counsel for the accused opted not to file any submissions but the Prosecution filed submissions dated 12<sup>th</sup> August 2024.
4. Upon highlighting the provisions of the law under which the accused is charged and the evidence advanced before Court, the learned Prosecution Counsel submitted that the Prosecution must prove the ingredients of the offence of murder being :-
  1. Death of deceased.
  2. Cause of deceased's death was as a result of the direct consequence of accused's unlawful act or omission (actus reus).
  3. The unlawful act or omission was committed with malice aforethought.



5. He submitted that though no one witnessed the killing of the deceased, cogent evidence was placed before Court to warrant the accused being placed on his defence. In support, he relied on the Court of Appeal decision in *Ahamad Abolfadhi Mohammed & another v Republic* [2018] eKLR where it was held that the guilt of an accused person can be either direct or circumstantial evidence. Further, he placed reliance on the Court of Appeal case of *Abanga alias Onyango v Republic* Criminal Appeal No. 32 of 1990 where it stated the three tests that must be satisfied when the case rests entirely on circumstantial evidence, that is :-
  1. Circumstances from which an inference of guilt is sought to be drawn must be cogently established ;
  2. Those circumstances should be of a definite tendency unerringly pointing to the guilt of the accused and that;
  3. The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and no one else.
6. In this case, he submitted that strong indicators point a finger towards the accused which case points to a case of malice aforethought. That the plan was well orchestrated by discarding the body and implements of murder. It was submitted that the sisal rope is the murder weapon use to strangle the deceased and therefore, the accused would be in the best position to explain why the garment and rope were found in a pit latrine within his compound.
7. In regard to the doctrine of last seen, he cited cases including *Republic v E.K.K* [2018]eKLR and submitted that PW3 was the last person to see the deceased, as the accused ushered the deceased in to his compound. Further, it was submitted that the finding of the deceased’s trouser and gumboots discarded in the Accused’s pit latrine was an indicator that the accused played a pivotal act in discarding evidence. Lastly , he urged the Court to place the accused person on his defence.
8. In short , the Prosecution is telling this Court that it has established a prima facie case against the accused person. As to what a prima facie case is, the Court of Appeal in *Ramanlal Trambaklal Bhatt v Republic* (1957) EA 332 thus: -
 

“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.

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.”
9. This Court has considered the evidence tendered by the seven (7) witness herein together with the submissions by the Prosecution and is satisfied that a prima facie case has been established to warrant the accused person being placed on his defence.
10. Accordingly, he is hereby placed on his defence under Section 306 (2) of the *Criminal Procedure Code*.



**DATED, SIGNED AND DELIVERED AT NAKURU THIS 11<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Mr. Kihara for the State

Daniel Thiongó Maigwa - Accused

Ms Chemg'etich for Accused

Ruto, Court Assistant

