



Republic v Bongeï (Criminal Case 6 of 2020) [2025] KEHC 3554 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3554 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 6 OF 2020
JK SERGON, J
MARCH 20, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

KIPKEMOI LAWRENCE BONGEI ACCUSED

RULING

1. Kipkemoi Lawrence Bongeï the Accused herein was charged with the information of Murder Contrary to Section 203 as read with 204 of the [Penal Code](#). Particulars of the information are that on the night of 9th day of March, 2020 at Kobil Petrol Station in Kericho Town within Kericho County, murdered Dennis Kipngeno Bett.
2. The accused person took a plea and pleaded not guilty to the charge of murder. The prosecution called fifteen (11) witnesses who testified in support of its case against the accused herein. The prosecution closed its case.
3. The Learned Counsel representing the accused, filed written submissions and contended that the prosecution had failed to adduce enough evidence beyond reasonable doubt to warrant this court to find the accused guilty of a charge of murder. He argued that the prosecution did not establish the motive of the crime, no evidence had been adduced to show that the accused and the deceased had previous interaction and that the first encounter between the deceased and the accused, did not disclose any motive to commit the instant offence, the accused merely bumped on the deceased while trying to rescue a colleague from attack when the misfortune occurred. He argued that on the material day, the accused was intoxicated which therefore negated the element of malice aforethought. The Learned Counsel finally argued that the prosecution did not give enough evidence linking the accused to the instant offence, the murder weapon was never produced or presented in court and the CCTV footage relied on by the I/O in this case.



4. The Learned Senior Assistant Director of Public Prosecution on his part maintained that the prosecution had established a prima facie case against the accused beyond reasonable doubt.
5. This court has considered the prosecution's case at length. Pw. 1 stated that on the material day he saw the accused break a bottle and use it to stab the deceased on the neck, the victim was taken to hospital whereas the accused was accosted by some boda boda operators. Pw. 3, Pw. 3 and Pw4 were in the company of the accused at the Exclusive Club, they ordered for two bottles of whisky which they did not finish and the accused person left with the unfinished bottle of whisky, there was an altercation outside the club and the witnesses saw the accused person attack the deceased who was unknown to them with the said bottle. The witnesses were arrested in connection to the incident. Pw. 5 testified that he was at the Exclusive Club on the material day, where he heard of the incident but did not witness the incident. Pw. 6 a boda boda operator testified that on the material day he witnessed the altercation whereby the accused broke a bottle and stabbed the deceased on the neck. He testified that the victim bled profusely and was taken to hospital for medical treatment where he succumbed. He confirmed that he did not know the accused person prior to the incident but saw the accused at the crime scene. Pw. 7 a medical officer testified that he conducted an autopsy on the deceased and formed the opinion that the cause of death was hemorrhagic shock due to sharp left anterolateral neck cut and produced the post mortem report. He confirmed that blood samples of the deceased were collected and taken for forensic analysis. Pw. 8 a government chemist testified that a DnA analysis was done on blood samples of the deceased and the accused and articles of clothing recovered from the accused, however, the government chemist report and exhibit memo were produced by Pw.10 which revealed that the DnA profile in item B which was a striped sweater had mixed DnA profiles that of the accused and the deceased. Pw. 9 a crime scene officer testified that he attended the crime scene, took photographs of the crime scene and the body of the deceased and produced the photographs and a certificate in court. Pw. 11 a police sergeant and the investigating officer testified that she was assigned to investigate the murder. She stated that the accused had already been apprehended and was in police custody. She stated that in her investigation she relied on CCTV camera footage that was given to her by the manager at Exclusive Club. She further stated that as part of her investigations, she collected witness statements, witnessed the autopsy, collected blood samples and articles of clothing from the accused and deceased and forwarded them to the government chemist for forensic analysis.
6. I find that the prosecution witness accounts place the accused at the crime scene and that there is direct evidence that the accused assaulted the deceased with a broken whisky bottle and that the victim succumbed to the injuries he sustained as a result of the attack.
7. Having considered the testimonies of the prosecution witnesses, the question is whether the evidence tendered establishes a prima facie case against the accused or whether the accused has a case to answer. In Republic v Abdi Ibrahim Owi [2013] eKLR, the court defined a prima facie case as follows: "Prima facie' is a Latin word defined by Black's Law Dictionary 8th Edition as, "sufficient to establish a fact or raise presumption unless disapproved or rebutted". 'Prima facie' is defined by the same dictionary as "the establishment of a legally required rebuttable presumption." whereas in Ronald Nyaga Kiura v Republic, the court held: "It is important to note that at the close of the Prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie case has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the [Criminal Procedure Code...](#)"
8. Having considered the material placed before me, I am satisfied that the prosecution has established a prima facie case for the purposes of a finding that the accused has a case to answer.



9. I accordingly place the accused person on his defence, section 211 of the *Criminal Procedure Code* CAP 75 Laws of Kenya to be complied with.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 20TH DAY OF MARCH, 2025.

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J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Prosecutor – Masisa

Accused – Present in Person

W. K. Ngeno for the Accused

