



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Abuto (Criminal Case E023 of 2024)  
[2025] KEHC 3585 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3585 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CRIMINAL CASE E023 OF 2024**

**OA SEWE, J**

**MARCH 19, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ALLAN OUMA ABUTO ..... ACCUSED**

**RULING**

1. The accused person herein, Allan Ouma Abuto, was arraigned before the Court on 25<sup>th</sup> September 2024, on the Information by the Director of Public Prosecution that he had committed that offence of murder, thereby contravening the provisions of Section 203 as read with Section 204 of the *Penal Code*, Chapter 63 of the Laws of Kenya. It was alleged that on the 4<sup>th</sup> July 2024 at Oridi Village in North Kanyikela Location in Ndhiwa Sub County within Homa Bay County, he murdered Gordon Otieno Weke Abuto. The accused denied that Charge and the Prosecution called evidence from a total of 6 witnesses in proof of the allegations.
2. Pursuant to Section 306(1) of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya, it is imperative that, at the close of the Prosecution Case, a determination be made as to whether a prima facie case has been made out against the accused person to require him to answer. The rationale for this was aptly expressed in Ramanlal Trambaklal Bhatt -Vs- Republic [1957] EA 332 thus:

“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 true, as Wilson, J., said, that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It 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.”

3. Accordingly, I have given careful consideration to the evidence on record with a view of ascertaining whether it is evidence upon which the Court would be prepared to convict if no explanation is offered by the accused person. There is credible evidence that the deceased herein, Gordon Otieno Weke Abuto, died on the 4<sup>th</sup> July 2024. He was the younger brother of the accused and he returned home on the evening of 4<sup>th</sup> July 2024 from Migori where he was working as a driver to follow up on a misunderstanding that occurred earlier that day between the accused and their mother.
4. The Prosecution adduced credible evidence through PW1, PW2, PW3 and PW4 to show that, on the 3<sup>rd</sup> July 2024, the accused picked a quarrel with his mother (PW4) over food. The incident was reported to PW1, a sister to both the accused and the deceased. PW5 prevailed upon the deceased to go home and settle the issue for purposes of restoring peaceful relations between the accused and their mother. Accordingly, the deceased went home and arrived late in the evening. When the deceased approached the accused on the morning of 4<sup>th</sup> July 2024 to find out what the problem was, the accused picked a quarrel with him before stabbing him to death with a knife. The deceased was rushed to hospital but succumbed while undergoing treatment.
5. The prosecution further demonstrated that Postmortem was later conducted on the body of the deceased by Dr. Kevin Orege of St. Camillus Hospital. The doctor formed the opinion that the cause of death was internal hemorrhage secondary to a deep penetrating injury on the left lung following assault. There is therefore no dispute as to the death of the deceased or the cause of his death.
6. In the circumstances, there is prima facie proof that the injuries that led to the death of the deceased were inflicted by the accused. He is accordingly hereby placed on his defence to answer the Charge of Murder pursuant to Section 306(2) of the *Criminal Procedure Code*, Chapter 75 of the Laws of Kenya.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT HOMA BAY THIS 19<sup>TH</sup> DAY OF MARCH, 2025**

**OLGA SEWE**

**JUDGE**

