



**Republic v Maina (Criminal Case E001 of 2023)  
[2025] KEHC 6064 (KLR) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6064 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE E001 OF 2023  
HI ONG'UDI, J  
MAY 14, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOHN MWANGI MAINA ..... ACCUSED**

**RULING**

1. John Mwangi Maina hereinafter referred to as the accused is charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. The particulars being that the accused on the 2<sup>nd</sup> day of December, 2022 at Ndundori area in Nakuru North sub-county within Nakuru county, murdered Peter Kondu Waweru alias Peter Waweru Kamau.
2. He denied the charge and the matter proceeded to full hearing with the prosecution calling a total of five (5) witnesses.
3. PW1 Sheila Cherotich who worked at Alpha/Doshi bar in Matondori testified that on 2<sup>nd</sup> December, 2022 they received a report of their customer and a driver who had been killed. She did not witness anything in relation to the death of the deceased.
4. PW2 – Dr. Titus Ngulungu a pathologist from Nakuru Medical Training and Referral Hospital conducted the post-mortem on the deceased's body which had been identified by Susan Kamau the deceased's mother PW4. He observed several injuries on the deceased's head, fluid in the chest, haematoma and skull fracture on left side of head, blood clot in the skull, swelling of the brain and bleeding. He thus found the cause of death to be severe head injury caused by fatal assault. He produced the post-mortem report as PEXB 1.
5. In cross-examination he said the injuries were fresh and could not have been caused by a fall. That it needed one to co-relate with the scene to determine the cause of death.



6. PW3 – Ngugi John stated that on 2<sup>nd</sup> December 2022 he was at Ndunduri market when Mwangi (accused) slapped Waweru (deceased) on the head and stomach. That he then snatched Waweru money and a phone. Mwangi and Thuku carried Waweru away on a lorry. He further stated that the time was 8pm and he used his torch to see the happenings.
7. He also said he saw Mwangi hit Waweru on the head with a piece of wood; then boxed him on the mouth; hit him on the ribs and stomach with the piece of wood. He followed them on a motorbike upto the deceased’s home when he found the deceased seated holding his chin while the accused and Thuku were there.
8. In cross examination and re-examination, he denied seeing anyone beating the deceased. In fact, he said he only saw the deceased being carried away.
9. PW4 – Susan M. Kamau is the deceased’s mother. She stated that on 2<sup>nd</sup> December, 2022 around 7-7.30pm she was at home when a lorry came to her gate, carrying 3 people plus her son (the deceased). She knew two of the people i.e Njehia and Mwangi (accused). The two men removed the deceased from the vehicle, and brought him to her house and placed him on a seat. He was bleeding from his left ear and could not walk. She said Njehia and accused told her they had found the deceased at the Ndondori stage next to the hospital and police post.
10. She was later assisted to take the deceased to Ndundori Health Centre from where he was referred to Medical Center Nakuru. He was operated on and taken to the ICU, at the said facility. On 6<sup>th</sup> December, 2022 she was called at the hospital and on arrival she was informed he had passed on. On 7<sup>th</sup> December, 2022 she was notified by Ngugi (PW3) “a stage manamba” that the deceased had been hit by the accused with a piece of wood.
11. In cross examination she denied that the deceased was drunk when he was brought home. She said the accused refused to take him to hospital. She did not know who the 4<sup>th</sup> person in the lorry was. She said PW3 never came to her home on 2<sup>nd</sup> December, 2022.
12. PW5 – No. 244247 P. C Eric Wainaina the Investigating Officer said he was on 10<sup>th</sup> December, 2022 instructed by the DCIO to investigate this case, assisted by officer Daniel Mwangi. They went to Dundori police post and interviewed witnesses whose statements were recorded. The information they gathered was that the deceased had on 2<sup>nd</sup> December, 2022 at 5am been assaulted by a person well known to him and the person is the accused. Nothing was recovered at the scene.
13. He said the accused was arrested at Dundori police post from where he had presented himself on 10<sup>th</sup> December, 2022. He explained that there was delay in reporting because it took a few days before the deceased succumbed, to the injuries.
14. In cross examination he said the incident occurred at 5am when it was still dark. That there was only one witness, whose mental status was not established. He did not know his whereabouts.
15. In re-examination he said the eye witness is George Ngugi Mukami. That at the time of recording his statement he was okay and there was no need of establishing his mental status.
16. After the close of the prosecution case, counsel for both parties elected not file any submissions.
17. At this point this court has to determine whether the prosecution has established a prima facie case against the accused. What then is a prima facie case?
18. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person.



I make reference to the Court of Appeal case of (i) Ramanlal T. Bhatt V Republic [1957] E. A 332. Also see Republic V Abdi Ibrahim Owi [2013] eKLR. In other words, a ‘prima facie case’ means a case where the evidence by the prosecution is sufficient to sustain a conviction where an accused elects to remain silent in defence.

19. It must be remembered that the duty to prove a prima facie is only on the prosecution. It is never the accused’s duty to prove his innocence.
20. In this case there is no dispute about the fact and cause of death.
21. The issue is whether the prosecution has established that the deceased’s death was caused by the accused. PW5 the Investigating Officer said there was one eye witness whose name was George Ngugi Mukami. The person who claimed to have been an eye witness and later in cross-examination and re-examination changed was PW3 – who introduced himself as John Ngugi. Assuming that he was the eye-witness whom PW5 relied on to charge the accused then his evidence is not reliable.
22. He denied in cross-examination and re-examination having witnessed the deceased being beaten. Furthermore, despite PW5 saying there were other witnesses he never presented them to court.
23. PW2 stated that the lorry which brought the deceased home came at around 7-7.30 pm on 2<sup>nd</sup> December, 2022. On the other hand, PW3 said the incident occurred at 8pm. PW5 who conducted the investigations repeatedly said the incident occurred at 5.00am. His evidence differs from that of PW3 and PW4. It is therefore not clear when the incident occurred.
24. PW5 also told the court that the accused had presented himself to the Dundori police post on 10<sup>th</sup> December, 2022. There is no witness from that police post who testified, to confirm what PW5 told the court. It must be remembered that the accused denied the charge and so the prosecution had the duty to prove its case by availing before court all evidence in support of its case.
25. After analyzing this evidence on record, I am satisfied that the said evidence does not meet the required standard for proof of a prima facie case. In the circumstances I find the accused person not guilty and acquit him under section 306(1) of the Criminal Procedure Code. He shall be released unless otherwise lawfully held under a separate warrant.
26. Orders accordingly.

**DELIVERED, DATED AND SIGNED THIS 14<sup>TH</sup> DAY OF MAY, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG’UDI**

**JUDGE**

