



**Republic v Kafute & another (Criminal Case E012 of 2021)  
[2025] KEHC 8445 (KLR) (Crim) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8445 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E012 OF 2021  
K KIMONDO, J  
JUNE 17, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOSEPH WAWERU KAFUTE ..... 1<sup>ST</sup> ACCUSED**

**EAVINE SUMBA ALIAS BLACKY ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The two accused persons are 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 4<sup>th</sup> February 2021 at about 20:40 hours at Glucola Babadogo area in Ruaraka within Nairobi County the accused, jointly with others not before the court, murdered Brian Sore Khalisa.
3. They pleaded not guilty. The prosecution managed to call five witnesses.
4. The Republic opted not to file submissions at this stage. Learned counsel for the 2<sup>nd</sup> accused, Mr. Kinara, filed detailed submissions dated 12<sup>th</sup> March 2025. Learned counsel for the 1<sup>st</sup> accused, Mr. Mundia, also filed submissions but which are undated.
5. The sum total of the submissions by both accused persons is that the evidence does not meet the required standard of proof; and, accordingly, they should be acquitted. Reliance was made on the decisions in *Bhatt v Republic* [1957] E.A. 332, *Anthony Njue v Republic*, [2006] KECA 339 (KLR) and *Joseph Kimani Njau v Republic* [2014] eKLR among others.



6. Dickson Karisia (PW1) is a brother to the deceased. On 8<sup>th</sup> February 2021, he identified the blood-stained body at the City Mortuary. It had a visible stab-wound on the left side of the stomach. The autopsy was conducted by Dr. Peter Ndegwa (PW2). According to the post-mortem report (exhibit 1), the cause of death was “exsanguination secondary to chest injury due to penetrating force trauma”.
7. PW3 was the village elder, Amos Njeru Ireri. He was informed by a lady that the deceased was stabbed. He saw three stab wounds on the body. He alerted the police who arrived at the scene about 20 minutes later. According to the witness, a girlfriend to the deceased adversely mentioned the 1<sup>st</sup> and 2<sup>nd</sup> accused persons, among others, as the assailants. The police arrested the 1<sup>st</sup> accused from his house and the 2<sup>nd</sup> accused “who was hiding in the plot”.
8. According to Corporal Evans Bowen (PW5), the girlfriend, Lilian, named three attackers: Stevo alias Last Born, Kafute alias Rasta and Blacky. He and his colleagues found Kafute in his house “changing clothes” while Blacky was arrested “hiding in the bathroom under some garbage”.
9. It bears repeating that the accused are still deemed innocent at this stage. Furthermore, the inquiry is merely to establish if a prima facie case has been made out requiring a rebuttal from them.
10. I have kept in mind three matters: Firstly, that the attack occurred at night; secondly, that the deceased’s girlfriend, Lilian, did not take to the stand; and, lastly, that the identification parade forms were never produced. However, 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 the five witnesses, I find that the Republic has established a prima facie case against both accused.
11. Accordingly, under the provisions of section 306 (2) of the *Criminal Procedure Code*, I now place both accused persons on their defence.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF JUNE 2025.**

**KANYI KIMONDO**

**JUDGE**

Ruling read virtually on Microsoft Teams in the presence of-  
Accused.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Mwangi for the 1<sup>st</sup> accused instructed by Mundia Mwangi & Company Advocates.

Mr. Rasugu for the 2<sup>nd</sup> accused instructed by Innocent Kinara Rasugu Advocate.

Mr. E. Ombuna, Court Assistant.

