



**Republic v Ingubu (Criminal Case 59 of 2019)
[2025] KEHC 11026 (KLR) (28 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11026 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA**

CRIMINAL CASE 59 OF 2019

AC BETT, J

JULY 28, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

BENARD LUWANGU INGUBU ACCUSED

RULING

1. The Accused is charged with murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars being that on the night of 30th to 31st August 2019, at Tukhola village, Madivini Sub Location, Shikumu Location in Kakamega South Sub County, Kakamega County, he murdered one Silvanus Luvutse Ingubu.
2. The prosecution called four (4) witnesses. None of the witnesses was an eye witness.
3. From the evidence, it is undisputed that the Accused and the deceased were brothers as both were biological sons to Teresa Witechera Shikonyela Ingugu (PW4) and step-brothers to John Suprose Ingugu (PW1).
4. PW1's evidence was that on 31st August 2019 at about 8.00 a.m., Jane Lwangu summoned him to her home and on arrival, he found the deceased in his house taking uji. The deceased who appeared unwell did not respond to PW1's question as to what was wrong. PW1 said that he then went to a neighbour's home and while there, received news that the deceased had passed on. He went back to the deceased's house and heard people saying that the deceased had been killed by the Accused whereby he looked for the Accused and advised him to go to Eregi Police Station.
5. PW2 was a police officer who said that on the material date, while at Eregi Police Station, they received a report from PW1 that the deceased had been found dead in his house. They proceeded to the scene where they found the body of the deceased. The body had bruises and blood stains all over the face as well as a fractured leg. They interrogated people present and were informed that on 30th August 2019,



- the Accused and the deceased were taking chang'aa when a fight broke out and the Accused assaulted the deceased. PW2 was not the investigating officer.
6. PW3 was the investigating officer No. 237032, Chief Inspector Dennis Tarwish who reiterated PW2's evidence and added that he interrogated one Patrick Shakara who told them that while the Accused and the deceased were taking shelter in his house while drinking alcohol, an altercation arose between them which degenerated into a fight that led to the deceased being injured. PW3 produced the post-mortem report which stated that in the Consultant Pathologist's opinion, the deceased died from acute haemorrhagic shock secondary to bleeding as a result of assault.
 7. PW4 was the Accused's mother who testified that on the material date, Shakara brought the deceased to her home and left him outside the house. She said that when she got outside, she found that the deceased was no longer alive. According to her, she did not know where Shakara brought the deceased from or why they left him outside the house.
 8. I am now required to make a ruling as to whether the Accused has a case to answer.
 9. For the court to find that the Accused has a case to answer, the prosecution must establish a prima facie case. A prima facie case would be made out if there is sufficient evidence that the deceased was killed, that the killing was unlawful and that the Accused is reasonably connected to the killing. The evidence must be such that if the Accused did not controvert the prosecution's case in his defence, the court would convict him of the offence.
 10. In the case of *Ramanlal Trambaklal Bhatt v. Republic* [1957] EA 332 – 335, the court stated:-

“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 will fill the gaps in the prosecution case. Nor can we agree that whether there is a case to answer depends only on whether there is sufficient evidence, irrespective of its credibility or weight, sufficient to put the accused in his defence. A mere scintilla of evidence can never be enough, nor can any amount of worthless discredited evidence. It is may not be easy to define what is meant by a prima facie. Still, 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.”
 11. In light of the principles established by the courts, I have carefully analyzed the evidence adduced by the prosecution. Whereas there is no doubt that Silvanus Luvutse Ingubu is dead and that the cause of death was unlawful being due to assault, there is a serious lacuna in the prosecution's case as to who occasioned the injuries that led to the death.
 12. The evidence of PW1, PW2 and PW3 to the effect that the deceased was assaulted by the Accused was hearsay evidence. PW3 the investigating officer relied on the evidence of one Patrick Shakava and his wife Mary. These two were never called as witnesses in the case.
 13. In absence of the evidence of Patrick Shakava and Mary Shakava who allegedly witnessed the Accused assault the deceased, this court must ask itself whether, drawing all rational inference, there is sufficient evidence that calls for controversion by the Accused.
 14. It is trite law that hearsay evidence is generally inadmissible as it lacks reliability and credibility, having not been subjected to the crucial test of cross-examination.



15. In the case of Anthony Njue Njeru v. Republic [2006] eKLR, the Court of Appeal, in holding that the Appellant should never have been placed on his defence, stated as follows:-

“We have now considered the evidence on record and the relevant law on this matter, and what has caused us some anxiety is what the learned Judge said in his ruling on no case to answer submission by Mr. Githinji. In that ruling delivered on 7th March, 2005 the learned Judge expressed himself thus:-

“I have considered the evidence before me. The evidence shows that the accused shot the deceased David Sila Kimuyu on 18th July, 2002 at Chiromo University Campus within Nairobi area. There is no eye-witness evidence as to how this happened. All witnesses who gave evidence arrived at the scene of crime after the deceased had been shot and had died. This includes the evidence of John Musyimi Kamwanza, PW2 who testified that he was with the accused but ran away before the accused shot the deceased dead. The relevant evidence on record which attempts to explain the circumstances under which the shooting took place are (sic) on the level of hearsay evidence. (underlining supplied)

Having expressed himself so conclusively, we find it difficult to understand why the learned Judge found it necessary to put the appellant on his defence. Was there a prima facie case to warrant the trial court to call upon the appellant to defend himself? It is a cardinal principle of our law that the onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if, at the close of prosecution the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction”. The issue of what is a prima facie case in criminal trials was clearly explained in Ramanlal Trambaklal Bhatt v R [1957] E.A. 332 at p. 334-335.”

16. At the end of the prosecution’s case, there was no cogent evidence connecting the Accused to the murder of his deceased brother and to call upon him to tender a rebuttal would be tantamount to requiring him to fill the gaps in the prosecution’s case.
17. In the end, I find that the prosecution has not established a prima facie case and hereby acquit the Accused of the charge of murder. The Accused is set free forthwith unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 28TH DAY OF JULY 2025.

A. C. BETT

JUDGE

In the presence of:

Ms. Chala for the Prosecution

Ms. Ayuko holding brief for Mr. Matete for the Accused

Court Assistant: Polycap

