



**Republic v Mugai (Criminal Case E004 of 2024)  
[2025] KEHC 10361 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10361 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL CASE E004 OF 2024**

**DK KEMEL, J  
JULY 18, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**CORNEL OGENO MUGAI ..... ACCUSED**

**RULING**

1. The accused herein Cornel Ogeno Mugai has been charged with an offence of murder contrary to Section 203 as read with 204 of the Penal Code. The particulars of the offence are that on the 7<sup>th</sup> January, 2024 at unknown hours at Masita village, Bondo SubCounty within Siaya County unlawfully killed one Gabriella Ogeno Mugai.
2. The prosecution called a total of four witnesses in support of its case.
3. The prosecution’s case is that on the material date, the accused herein together with his wife arrived from Bondo town and found that their daughter who is the deceased herein had stolen Ksh200/= from the accused wallet and that the accused tried to interrogate her but the girl was uncooperative. That the accused finally decided to discipline the deceased by caining her using some sticks however the girl’s condition got worse and that they rushed her to Bondo Sub County Hospital for treatment. The girl however succumbed to the injuries. The nurses at the hospital got suspicious and alerted the police. the police officer No. xxx PC Sheldon Ndenya Ndalo rushed to the hospital where he learnt that the accused and his wife had brought in the deceased who was then aged ten (10) years to the hospital and who had already died by the time they reached the hospital. That he saw the body had bruises on the forehead, chest, left and right shoulder as well as the head. The accused and his wife were escorted back to their home in Nyasita village where the beating of the child had taken place. That he recovered two sticks from their house (seating room) and which he produced as Exhibit -2. The accused and his wife were escorted to Bondo Police Station where they were interrogated and later charges were preferred against the accused while his wife was treated as a prosecution witness. An autopsy on the body of the



deceased was conducted by Dr. Bruno Okal (PW3) who formed the opinion that the cause of death was severe brain injury secondary to trauma by blunt object. The autopsy report was produced as Exhibit 1. The mother of the deceased Leonida Awuor Owino (PW2) testified and confirmed that the deceased had been caned by the accused who is her husband.

4. At the close of the prosecution's case, learned counsel for the parties opted not to tender submissions on a case to answer and relied on the evidence already presented.
5. At this stage of proceedings, the prosecution is under a duty to establish a *prima facie* case against the accused persons so as to warrant them make a defence. A *prima facie* case is one in which a reasonable tribunal directing its mind to the law and evidence can convict an accused if no evidence is tendered by the defence to the contrary. What this means is that the evidence that has been presented should be sufficient to sustain a conviction against the accused persons were they to elect to remain silent in defence. See *Bhatt v Republic* [1957] EA 332.
6. After analyzing the evidence of the prosecution's witnesses, it is clear that the evidence of PW1, PW2, and PW4 placed the accused person at the scene of crime. The accused had beaten the deceased for having stolen Ksh200/= from his wallet but however, the beating became excessive thereby leading to the death of the deceased. At the time, the accused's wife (PW2) was present and that the two tried to rush the deceased to hospital but unfortunately the deceased succumbed to injuries. The accused therefore was placed at the scene of crime and therefore must now offer an explanation as to how the deceased met her death.
7. In view of the foregoing observation, it is my finding that the prosecution has established a *prima facie* case against the accused herein to warrant him to be called upon to make a defence. Consequently, I find Cornel Ogeno Mugai, has a case to answer. He is now called upon to elect to conduct his defence in accordance with the provisions of Section 306 (2) of the [Criminal Procedure Code](#).

**DATED AND DELIVERED AT SIAYA THIS 18<sup>TH</sup> DAY OF JULY, 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

Cornel Ogeno Mugai.....Accused.

Ochanyo.....for Accused.

M/s Kerubo.....for Respondent.

Okumu.....Court Assistant.

