



**Republic v Mwangi & another (Criminal Case E009 of 2021)  
[2025] KEHC 10432 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10432 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
CRIMINAL CASE E009 OF 2021  
CW MEOLI, J  
JULY 17, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOHN NJUGUNA MWANGI ..... 1<sup>ST</sup> ACCUSED**

**SAADIYQ ABDURAZIZ WAIGANJO ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The two accused herein are charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The information states that on 11<sup>th</sup> April 2021 at Ol Kasasi Area, within Ongata Rongai Township, Kajiado County the Accused jointly murdered Khalif Ibrahim.
2. The Accused denied the charges. During the trial, the prosecution called 8 witnesses. The duty of the court at this stage is to determine whether a prima facie case has been established against the Accused. Section 306 (2) of the *Criminal Procedure Code* provides as follows:

“When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.”

3. Briefly, the prosecution case was that on 5<sup>th</sup> April 2021, Fatuma Mohamed Noor (PW2), a resident of Olkasasi Ongata Rongai was escorting her visitor one Mama Amina, when they heard screams, at



a nearby building. Upon looking into the compound through the open gate, they saw the deceased, a cousin to PW2 being assaulted by the two Accused persons. They were using sticks to assault the deceased. The women intervened just as the two assailants threw the deceased out of the compound in which the assault had happened.

4. With the help of Good Samaritans, PW2 had the deceased escorted to Lifecare Medical Centre, a clinic operated by Bishar Adan Ali (PW1), a clinician. PW2 also notified the relatives of the deceased including the deceased's sister Farhiya Ibrahim (PW3) who later joined her at the clinic. According to PW1 the deceased was in a bad state and had several physical injuries. He suspected that the deceased may have sustained fractures and after initial treatment, referred him to Kenyatta National Hospital. Meanwhile a report of the incident was made to PC Winfred Mwangela (PW4) of Ongata Rongai Police Station.
5. On the next day, the deceased was treated at Kenyatta National Hospital and discharged to go home. He died at home on 12.04.2021. The body was photographed by Sgt. George Odhiambo (PW5), while an identification parade involving the second Accused was conducted by CIP Mbae (PW6) on 12.04.2021. The results of the autopsy conducted on the same day by Dr. Peter Muriuki Njeru (PW8) indicated that the cause of death was multiple musculoskeletal injuries due to blunt force trauma, consistent with assault. Following investigations conducted by PC Matthews (PW7), the Accused were arrested and charged.
6. At the close of the prosecution case, Counsel for the 2<sup>nd</sup> Accused opted not to file submissions. Counsel for the 1<sup>st</sup> Accused despite indicating her desire to file submissions had not done so at the time of this ruling, even after time for doing so was extended.
7. The court has reviewed the evidence on record. At this stage, all that the court ought to establish is whether a prima facie case has been made out against the two Accused persons. In the case of *Wibiro alias Musa V. Republic (1960) EA 184* the Court of Appeal for East Africa defined the term "*prima facie case*" as follows :-

“By his use of the phrase “prima facie case” the learned judge has left this court in doubt as to his precise meaning. It is a phrase more commonly used at the close of the prosecution's case than at the end of the whole case at which stage the only question is whether the prosecution has proved its case, on the whole of the evidence, beyond reasonable doubt. The question of what constitutes a prima facie case was dealt with by this court in 1957 in the case of *Ramanlal Trambklal Bhatt V. R. (1957) EA 332 (EA)* and the following passage was taken from the judgment of the court at [age 334 and p. 335:-

“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.” (Emphasis added)

8. Having given careful consideration to the prosecution evidence in light of the relevant provisions of law and the case law above, the court notes the following. PW2 testified to have witnessed the assault upon the deceased on 5.04.2021 by the two Accused persons who wielded sticks. She said that the incident occurred during the day after 1pm prayers. PW2 identified the assailants as persons she had seen before. The deceased was in a bad state when seen at PW1’s clinic on the same date. Hence, he was referred to a hospital where an investigation could be done, PW1 suspecting that he had sustained fractures. Although he was treated at Kenyatta Hospital on the next day and discharged, the deceased died about six days later as a result of multiple fractures, according to PW8.
9. In view of all the foregoing, the court has come to the conclusion that the prosecution has established a prima facie case against both Accused persons, warranting their being placed on their defence. It is so ordered.

**DELIVERED AND SIGNED ELECTRONICALLY AT KAJIADO ON THIS 17<sup>TH</sup> DAY OF JULY 2025.**

**C.MEOLI**

**JUDGE**

In the presence of:

For the State: Mr. Kilunda

1<sup>st</sup> and 2<sup>nd</sup> Accused: present

For the Accused: Mr. Kiama for the 2<sup>nd</sup> Accused and holding brief for Ms. Mwau for the 1<sup>st</sup> Accused

C/A: Lepatei

