



**Republic v Kemboi (Criminal Case E017 of 2022)
[2025] KEHC 12987 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12987 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E017 OF 2022
JK SERGON, J
SEPTEMBER 18, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ERIC CHERUIYOT KEMBOI ACCUSED

RULING

1. Eric Cheruiyot Kemboi the Accused herein was charged with the information of Murder Contrary to Section 203 as read with 204 of the Penal Code. Particulars of the information are that on the 21st day of March, 2022 at Timbilil Sub Location in Kunyak Division, Kipkelion Sub County within Kericho County, murdered Paul Kiptonui Mosoin.
2. The accused person took a plea and pleaded not guilty to the charge of murder. The prosecution called ten (10) witnesses who testified in support of its case against the accused herein. The prosecution closed its case.
3. The Learned Senior Assistant Director of Public Prosecution on her part was adamant that the prosecution had established a prima facie case against the accused beyond reasonable doubt. At the time of writing this ruling, the Learned Counsel for the accused was yet to file written submission on behalf of his client.
4. This court has considered the prosecution's case at length.
5. Pw. 1 stated that on the material day, visited the house of the accused for a drink, the accused was a changaa operator and that while he was there an MCA aspirant gave them money to share among themselves and that soon after, they left, leaving Mosoin the deceased and the accused. Pw. 1 testified that a few days later they stumbled upon the severed head of the deceased.



6. Pw. 2, Pw. 3 and Pw. 4 testified that they did not know who had killed the deceased and that they were not in the vicinity when the deceased was murdered, however, they were present at the crime scene after they were informed about the discovery of the body of the deceased. Pw. 5 testified that on the material day he went to drink changaa at the homestead of the accused and that there were many people, however, when he left the homestead, he left the deceased with the accused.
7. Pw. 8 a government chemist testified that a DNA analysis was done on blood samples of the deceased and the accused and articles of clothing recovered from the accused. Pw. 8 produced the the government chemist report and exhibit memo and his findings were that the blood stains on t-shirt marked as item A matched the DNA profile of the accused, DNA profile generated from gray blood stained jumpers marked as item B and C were partial and inconclusive and that slasher marked as item D did not generate any DNA profile.
8. Pw. 9 a medical officer testified that he conducted an autopsy on the deceased and formed the opinion that the cause of death was brain damage and organ failure due to decapitation and produced the post mortem report.
9. Pw. 10 the I/O testified that as part of his investigations, he collected witness statements, witnessed the autopsy, collected blood samples and articles of clothing from the accused and deceased and forwarded them to the government chemist for forensic analysis. He testified that the accused was the last person seen with the deceased while he was alive and soon after had fled from the area for four months and was apprehended through the concerted efforts of members of the public and law enforcement officers. On cross examination, he conceded that there were no eye witnesses.
10. I find that the lack of direct evidence does not necessarily jeopardize the prosecution's case.
11. Having considered the testimonies of the prosecution witnesses, the question is whether the evidence tendered establishes a prima facie case against the accused or whether the accused has a case to answer. In Republic v Abdi Ibrahim Owi [2013] eKLR, the court defined a prima facie case as follows: "Prima facie' is a Latin word defined by Black's Law Dictionary 8th Edition as, "sufficient to establish a fact or raise presumption unless disapproved or rebutted". 'Prima facie' is defined by the same dictionary as "the establishment of a legally required rebuttable presumption." whereas in Ronald Nyaga Kiura v Republic, the court held: "It is important to note that at the close of the Prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie case has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the Criminal Procedure Code..."
12. Having considered the material placed before me, I am satisfied that the prosecution has established a prima facie case for the purposes of a finding that the accused has a case to answer.
13. I accordingly place the accused person on his defence, section 211 of the Criminal Procedure Code CAP 75 Laws of Kenya to be complied with.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 18TH DAY OF SEPTEMBER, 2025.

.....

J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh



Prosecutor – Ogutu

Accused – Present in Person

Kiprono for the Accused

