



**Republic v Lotyang (Criminal Case E016 of 2023)  
[2024] KEHC 3721 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3721 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL CASE E016 OF 2023  
RN NYAKUNDI, J  
APRIL 4, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOSEPH ARIONG LOTYANG ..... ACCUSED**

**RULING**

1. The accused person is facing a charge of murder contrary to section 203 as read with 204 of the [penal code](#). The particulars are that on the 827<sup>th</sup> day of August 2023 at Kakuma Refugee camp in Turkana West sub-county within Turkana County murdered (a minor) Peter Lotiang Joseph.
2. The accused pleaded not guilty to the charge and brief facts containing elements of the offence. In this respect under Art. 50 (2) (a) of the [constitution](#) the accused is presumed innocent until the contrary is proved either by direct or circumstantial evidence. The yardstick on the standard and burden of proof at the end of it all is as illustrated by the court in *Miller v Minister of Pensions* (1947) 2 All ER page 372 @ 373 as follows:

“Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted to fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence ‘of course it is possible but not in the least probable’ the case is proved beyond reasonable doubt but nothing short of that will suffice”.

3. In any criminal trial in our legal system at the close of the prosecution’s case under section 306 of the [CPC](#) the High Court is required to consider the evidence and make a finding as to whether the prosecution has sufficiently established elements of the offence or any such lesser offence known in law



as against the accused person or persons to warrant to be called upon to offer their defence in answer to the charge.

4. The principle maxim on a prima facie case is clearly stated in the case of *Ramanlal Trambaklal ~Bhatt v Republic* [1957] 1. EA 332, in which the court of appeal of Eastern Africa held *inter alia* that:

- “(a) it may not be easy to define what is meant by a “*prima facie*” case, but it must mean one on which a reasonable tribunal, properly directed its mind to the law and evidence could convict if no explanation is offered by the defence.
- (b) The question whether there is a “case to answer” cannot depend only on whether there is “some evidence” irrespective of its credibility of weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough nor can nay amount of worthless discredited evidence.
- (c) 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 closure of prosecution case is merely one which, on full consideration might possible be thought insufficient to sustain a conviction.”

5. From the record and on the review of the evidence by the prosecution witnesses PW1, PW2 & PW3 is to the effect that the deceased Peter Lotiang Joseph is dead. These witnesses tendered documentary evidence in form of a post mortem report which showed that the deceased suffered deep cut wound at the frontal parietal regions measuring 6 x 6cm with skull bone involvement. Clotted blood. Therefore there is no dispute that he is dead. At the outset it is important to point out that the evidence in this case is both direct and circumstantial in nature. On top of that the prosecution also submitted a panga allegedly as a murder weapon used to inflict the fatal injuries. This court is aware that the cause of death and whether malice aforethought under section 206 of the [penal code](#) all pieces of evidence availed by the prosecution must be subjected to scrutiny within the parameters in the *Miller case*. However as of now it’s the courts mandate to look at evidential value as to whether there is existence of a *prima facie* case as adduced by each witness. It is therefore my view that the prosecution as of now does have a prima facie case made out against the accused person Joseph Ariong Lotyang to require him to make his defence under section 306 & 307 of [CPC](#).

**DATED, SIGNED AND DELIVERED AT LODWAR THIS 4<sup>th</sup> DAY OF APRIL, 2024**

In the presence of;

Mr. Kakoi for the state

Mr. Karanja legal counsel for the accused

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**R. NYAKUNDI**

**JUDGE**

