



**Republic v Momanyi & another (Criminal Case E039 of 2022)
[2024] KEHC 7534 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7534 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE E039 OF 2022**

**KW KIARIE, J
JUNE 19, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

PETER MOMANYI 1ST ACCUSED

MARY MOMANYI 2ND ACCUSED

RULING

1. Peter Momanyi and Mary Momanyi are charged with murder contrary to section 203, as read with section 204 of the [Penal Code](#).
2. The particulars of the offence are that on the 5th day of July 2022, at Orogare village, Orogare sub-location, in Nyamache Sub County within Kisii County, murdered Obadiah Ontugi Getui.
3. The deceased’s body was found in Erick’s land with multiple cuts. Peter Momanyi (accused 1) suspected that the previous day, the two were imbibing alcohol together. When police officers went to his house, they recovered some clothes with some blood stains.
4. Gentrix Vilika Wamboka (PW5) testified that she co-investigated this case with IP Kabogo. Her evidence was that when they went to Orogare village, they searched the house of Peter Momanyi and recovered a blood-stained machete and a green paper bag outside the compound. They later received other blood-stained items from Omosaria police station. These were a white checked shirt, a pair of black trousers, a light green shirt, a white striped shirt, a brown jacket, a petticoat, and a 20-litre yellow jerrycan.
5. The blood samples of the accused persons were taken and, together with the recovered exhibits, were taken for DNA sampling.



6. Mr. P.L. Kweyu, the government analyst, did the analysis on the samples escorted together with the blood samples of the deceased, Peter Momanyi and Mary Momanyi. His conclusion, as captured in the report, is as follows:

Based on the findings, the DNA profiles generated from the blood stains:

1. On the jacket (item “J”), panga (item “M”), shirt (item “F”) and trousers (item “F”) are similar and belong to a single unknown male person.
 2. The DNA profile on the petticoat (item” H”) matches that generated from Mary Momanyi's reference blood sample (suspect).
 3. The stains on the shirt (item “K”) and the shirt (item “G”) were partial and inconclusive.
 4. No DNA profile(s) was generated from the stains on the carrier bag (item “L”) and the jerrycan (item” N”).
 5. The DNA profiles of Dennis Ondieki, David Ondari, Peter Momanyi (all suspects), and Obadiah Ontugi (deceased) did not match any of the DNA profiles generated above.
7. When the DNA profiles generated did not implicate the accused persons, and there was no other evidence connecting them to the offence, it was illogical for the prosecution to charge them.
8. After considering the evidence on record, the question is whether the prosecution has established a prima facie case against accused persons. In the *Black's Law Dictionary*, 10th Edition, *prima facie* case is defined as follows:

prima facie case. (1805)

1. The establishment of a legally required rebuttable presumption.
 2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.
9. The Court of Appeal in the case of *Ramanlal Trambaklal Bhatt v R* [1957] EA 332 at 334 and 335 defined prima facie case as follows:

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.

10. Article 50 (2) (i) of the *Constitution of Kenya* provides:
- (2) Every accused person has the right to a fair trial, which includes the right—
 - (i) to remain silent, and not to testify during the proceedings;

In the instant case, if the accused persons opt to exercise their constitutional right hereinabove stated, I cannot enter a conviction based on the evidence on record. Therefore, the prosecution has failed to establish a prima facie case against them. I accordingly acquit each of the offence of murder under section 306 (1) of the *Criminal Procedure Code*. Each accused is set at liberty unless, if otherwise, lawfully held.

DELIVERED AND SIGNED AT KISII ON THIS 19TH DAY OF JUNE 2024.

KIARIE WAWERU KIARIE



JUDGE

