



**Republic v Mukundi (Criminal Case 21 of 2014)  
[2024] KEHC 8969 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8969 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE 21 OF 2014**

**J WAKIAGA, J  
JULY 24, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MARCUS MUKUNDI ..... ACCUSED**

**RULING**

1. The case is charged with the offence of Murder Contrary to Section 203 as read with Section 204, the particulars of which are that on the 24<sup>th</sup> day of December 2014 at Gathungururu area of Makuyu location within Muranga county murdered Francis Mwangi Karanja.
2. To prove its case against the same, the prosecution called and examined a total of nine witnesses and the end of which the parties were called to submit on whether the prosecution has made a case to enable the court put the accused on his defence, put differently, whether a prime facia case has been made out and that is the subject of this ruling.
3. For record purposes the trial herein commenced before Kimondo J who recorded the evidence of eight prosecution witnesses before proceeding on transfer and having complied with the provisions of Section 200 of the CPC, I heard and recorded the evidence of PW9. I have read and analysed the evidence of the eight prosecution witnesses as recorded for the purposes of this ruling.
4. On behalf of the accused, it was submitted that none of the prosecution witnesses saw the accused shooting the deceased and that the two police officers were armed, while PW3 stated that there was only one officer in civilian clothing's, was armed and that he was not the accused , and further there was inconsistency on the serial number of the AK47 gun which was examined, thereby raising doubt on the prosecution case, which benefit should go to the accused person, who was only discharging his duties as a police officer when the alleged offence occurred.



5. It was contended that whereas death was established, the evidence on record was inconclusive as to whether it was unlawfully caused with malice aforethought and whether the accused was positively identified as the person who committed the offence. It was contended that the test under *Bhatt v R* [1957] EA 332 was not established and therefore the accused should be acquitted under the provision of Section 306(1) of the *Criminal Procedure Code*.
7. The prosecution submitted that the death was established through the evidence of PW6 Dr. Eunice Mugweru, as severe internal haemorrhage due to gunshot wound and that PW1, 2, 3, 5 and 9 put the accused at the scene and established malice aforethought, thereby establishing prima facie case to enable the court put the accused on his defence.

### **Determination**

8. At this point in the proceedings all that the court ought to do is to establish whether based on the evidence of record, it will be willing to convict the accused should he opt not to offer any evidence on his defence as was stated in the case of *Bhatt v Republic* [1957] EA
9. With the injunction of Justice Ojwang as he then was above, I have looked at the evidence of PW1, PW2, PW5 and PW8 who put the accused at the scene as corroborated with the evidence of PW9 and without saying much thereon so as not to compromise the defence the accused is likely to offer should he chose to do so while exercising his rights under Article 50 of the *Constitution*, I am satisfied that the prosecution has established a prima facie case to enable me put the accused on his defence which I hereby do, the accused shall upon the advice of his Advocate select how his wish to defend himself, the court having advised him on his Constitutional and Statutory rights.

**DATED, SIGNED AND DELIVERED AT MURANGA THIS 24<sup>TH</sup> DAY OF JULY 2024**

**J. WAKIAGA**

**JUDGE**

In the presence of:-

Ms. Gakumu for the Accused

Ms Kimani for Mwangi Ben

Quinteen – Court Assistant

