



**Republic v Mulindi (Criminal Case 45 of 2017)  
[2023] KEHC 1002 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1002 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL CASE 45 OF 2017  
RN NYAKUNDI, J  
FEBRUARY 10, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**GODFREY MWELEONI MULINDI ..... ACCUSED**

**RULING**

1. On August 23, 2017, Geoffrey Mwelemi Mulindi was charged with the offence of Murder contrary with section 204 of the *Penal Code*. The brief particulars are, that on the August 10, 2017 at Randa Estate in Eldoret East sub County within Uasin Gishu County, Murdered Anna Jepkoech. The accused entered a plea of not guilty necessitating the prosecution to adduce evidence in support of the charge in terms of Article 50 (2) (A) of the *Constitution* and section 107 (1), 108, and 109 of the *Evidence Act*. As a consequence therefore 4 witnesses were summoned in support of the burden of proof of the offence beyond reasonable doubt.
2. At the close of the prosecution case this court is mandated by law to evaluate the evidential burden as it relates to particular facts in issue and the elements of the offence in terms of section 306 (1) and (2) of the *Criminal Procedure Code*. Lord Show that in the case commonwealth-vs- Webstar defines it like *Common Wealth –vs- John W Webster 5 cush 292 59 Mass 295 march 250*

' It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is upon the prosecutor. Al, the presumptions of law independent of evidence are in favor of innocence; and every person is presumed to be innocent until he is proved guilty. If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true



than the contrary, the evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding, and satisfies the reason and judgement, of those who are bound to act conscientiously upon it. This we take to be proof beyond a reasonable doubt; because if the law, which mostly depends upon considerations of a moral nature should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether.'

3. The question up for the decision of the court is whether the evidence so far adduced establishes the critical elements of the offence of murder at the close of the case. From the prosecution perspective the test of validity of the offence is underpinned on the following ingredients.
  - a. Whether the deceased is dead?
  - b. Whether his death was unlawfully caused
  - c. Whether in searching analysis from the above the accused committed the offence with malice aforethought
  - d. But more important is whether the prosecution placed the accused at the scene of the crime.
4. In sum the approach on a submission no case to answer or a prima facie case in favour of the prosecution the Judge has to navigate the following legal landscape as illustrated by Lord Lane *R V Galbraith (1981) 1 WLR 1030* where he said.
  - ' (1). If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case
  - (2) The difficulty arises where there is some evidence but it is of a tenuous nature for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.
    - (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty then the judge should allow the matter to be tried by the jury. There will of course, as always in this branch of the law be borderline cases. They can safely be left to the discretion to the judge'
5. As stipulated under section 306 (1) (2) of the Criminal Procedure Code the duty to establish a prima facie evidence in the Criminal Charge against the accused person is vested with the prosecution and it never shifts to the defence. The summary of the evidence of PW1 to PW4 as evaluated by this court, I am of the considered view being guided by the parameters outlined above by Lord Lane the prosecution has in its favour probative evidence within the ambit of section 107 (1) of the *Evidence Act* to call upon the accused to state his defence. In this case a motion of no case to answer fails.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 10<sup>TH</sup> DAY OF FEBRUARY 2023**



.....

**R. NYAKUNDI**

**JUDGE**

**([Mark.mugun@gmail.com](mailto:Mark.mugun@gmail.com))**

