



**Republic v Jadi & 2 others (Criminal Case 49 of 2018)
[2023] KEHC 17341 (KLR) (Crim) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17341 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 49 OF 2018
K KIMONDO, J
MAY 11, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

FAITH JADI 1ST ACCUSED

WESLEY SAMUEL 2ND ACCUSED

PETER GICHIMU KIARIE ALIAS MUHIMU 3RD ACCUSED

RULING

1. The three accused persons are charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. The particulars are that on the night of September 2, 2018 at Dam village, Mountain View Area, Dagoretti Sub-County within Nairobi County jointly with others not before the court, murdered Dominic Nambili Isaya.
3. They all pleaded not guilty. The prosecution called ten witnesses.
4. Learned counsel for the accused lodged submissions dated April 17, 2023 together with a list of authorities. Those by the learned Prosecution Counsel are dated February 20, 2023.
5. Learned counsel for the accused submitted that the deceased was attacked by a mob inside an establishment styled Texas Bar. Counsel concedes that the accused were in the bar, but he contends that they were not positively identified as the assailants; and, that the identification parade conducted by Chief Inspector Kamama (PW8) was a mere sham. He argued further that the body was recovered in a dam far away from the bar. In his view, no one can tell for certain what caused the death.



6. But according to the prosecution, the totality of the evidence of the ten witnesses has established a case sufficient to place all the accused on their defence.
7. My view is as follows. According to Ronald Mambili (PW1) and Brian Irako (PW2), the 1st accused (who was an employee at the bar) hit the deceased with a beer bottle on the back of the head; and, that the 2nd and 3rd accused intervened or participated in assaulting the deceased using fists and kicks.
8. The body of the deceased was found floating in the dam on September 6, 2018. The scene was processed and the remains removed to the City Mortuary. According to the pathologist (PW5) the body had been in the water for long and had decomposed. The autopsy report (exhibit 1) concludes that the deceased died from “head injury due to blunt force trauma”.
9. The prosecution’s case is founded largely on circumstantial evidence. But upon the digest of the evidence of all the ten witnesses; and, cognizant of the precedents in *Bhatt v Republic* [1957] EA 332 and *R v Kipkering arap Koske & another* 16 EACA 135 (1949), I find that the Republic has established a *prima facie* case calling for a rebuttal from all the accused.
10. Accordingly, under the provisions of section 306 (2) of the [Criminal Procedure Code](#), I hereby place all the accused persons on their defence.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MAY 2023.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of: -

Mr Masara for the accused persons instructed by Masara & Company Advocates.

Ms Kigira for the respondent instructed by the office of the Director of Public prosecutions.

Mr. E. Ombuna, Court Assistant.

