



REPUBLIC OF KENYA



**Republic v Orwaru (Criminal Case 24 of 2020)
[2023] KEHC 19079 (KLR) (Crim) (8 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19079 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE 24 OF 2020**

K KIMONDO, J

JUNE 8, 2023

BETWEEN

REPUBLIC PROSECUTION

AND

PC BECKHAM OSORO ORWARU ACCUSED

RULING

1. The accused person is 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 13th April 2020 at Mathare Area Four within Nairobi County, he murdered Reuben Karani Kiriinya.
3. He pleaded not guilty. The prosecution closed its case after the testimony of eleven witnesses. All of them appeared before my predecessor, Bwonwonga J. Following retirement of the judge; and, pursuant to section 200 (3) of the *Criminal Procedure Code*, the accused elected to proceed from where the matter had reached.
4. Learned Prosecution Counsel lodged submissions dated 26th April 2023. She submitted that on the totality of that evidence, the prosecution has established a prima facie case against the accused.
5. Learned counsel for the accused opted not to make any submissions at this stage.
6. I have paid particular attention to the evidence of key witnesses. Harrison Mwanza Mulu (PW1), Joseph Kilonzo Kivumbi (PW3) and Joseph Kakuna Mwendwa (PW5) all testified that on the material night at about 1:00 a.m., they were inside PW1's kiosk together with the deceased chewing muguka or miraa. There was a curfew in force to contain the Covid-19 pandemic.



7. PW1 claimed that he had known the accused, who was a police officer, for about a year. He came into the kiosk dressed in uniform and assaulted them. He was demanding money. He attacked them using a whip (or a plastic cane) and a pistol. PW1 testified that as he was bending, he heard a shot ring out. PW2, who was under a table also heard it. And so did PW5. They later realized that the deceased had been shot through the chest.
8. There is then the ballistic examiner's report (exhibit 1), one bullet head (exhibit 2) and one empty cartridge case (exhibit 3). I have also paid heed to the Post-Mortem Form prepared by Dr. Johansen Oduor which was produced pursuant to the considered ruling of the court (Bwonwonga J) dated 28th February 2023. The autopsy report concludes that the deceased died from "heart and lung injuries due to gunshot using a low verocity fire-arm".
9. Upon the digest of the evidence of all the eleven witnesses; and, cognizant of the precedents in *Bhatt v Republic* [1957] E.A. 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 the accused person.
10. Accordingly, under the provisions of section 306 (2) of the Criminal Procedure Code, I hereby place the accused person on his defence.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 8TH DAY OF JUNE 2023.

KANYI KIMONDO

JUDGE

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

Mr. Omenke for the accused person instructed by Omenke Andenje & Company Advocates.

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

Mr. E. Ombuna, Court Assistant.

