



**Republic v Watitwa & 3 others (Criminal Case E048 of 2023)
[2024] KEHC 15544 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15544 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E048 OF 2023
DK KEMEL, J
DECEMBER 6, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

PAUL SIMIYU WATITWA 1ST ACCUSED

DAVIS WABOMBA OKUMU 2ND ACCUSED

TIMOTHY WANYONYI 3RD ACCUSED

LAWRENCE WAFULA KHAOYA 4TH ACCUSED

RULING

1. The four accused herein Paul Simiyu Watitwa, Davis Waromba Okumu, Timothy Wanyonyi and Lawrence Wafula Khaoya have been charged with an offence of murder contrary to Section 203 as read with Section 204 of the penal Code. the particulars are that on 3rd day of September, 2023 at Mwibale village, Mwibale Location, Bungoma South Sub County, jointly with others not before court murdered Abel Wekesa Baraza.
2. The prosecution called nine (9) witnesses in support of its case. The prosecution’s case is that on the material date the deceased was at his compound when the accused herein arrived while armed with crude weapons and who attacked the deceased. The deceased sought refuge inside his house which he locked from inside but that the accused persons were not deterred and who broke into the house and viciously assaulted the deceased until he died. The incident took place during the day and that those who witnessed it include PW1, PW2, PW5 and PW7. The police were called and that the few who were first to arrive were overwhelmed and that one of them got injured. The police later managed to contain the situation but by then the deceased had succumbed to the injuries. The body was collected and taken to Bungoma County Referral Hospital for preservation. A post mortem was later conducted on the body by Dr. Elly Kiplimo Kosgey (PW9) who noted several injuries on the body inter alia;



widespread bruises on the body consistent with beatings; deep cut wounds on the head and on the orbital wall. The internal examination revealed four fractured ribs on left hemithorax as well as massive subdural hematoma on the skull. H formed the opinion that the cause of death was severe head injury from blunt traumatic brain injury with chest injury. The autopsy report dated 8/9/2023 was produced as exhibit one. The investigating officer (PW8) visited the scene and conducted investigations and recorded statements of witnesses as well as recovering the assault weapons. The accused persons were arrested on 10/9/2023 within Mbiga area after they were pointed out by the mother of the deceased (PW1).

3. At this stage of proceedings, the prosecution is under a duty to establish a prima facie case against the accused persons so as to warrant them to be called upon to make a defence. In all criminal cases the burden of proof vests with the prosecution whose duty is to prove the guilt of the accused beyond reasonable doubt. A prima facie case is one in which a reasonable tribunal directing its mind to the law and evidence placed before it can convict an accused or the absence of any evidence to the contrary offence by the defence. (See BHATT Vs. R [1957] EA 332)
4. I have given due consideration to the evidence adduced by the prosecution at his stage of the proceedings. It is not in dispute that there was death of the deceased which took place at his home on the material date and that the incident took place during the day. The evidence of PW1, PW2, PW5 and PW7 clearly placed all four accused at he scene of crime who must now offer an explanation as to how the deceased met his death. It is further my finding that were the accused persons to elect to remain silent in defence, the evidence so far tendered is sufficient to sustain a conviction against them.

I find that the prosecution has established a prima facie case against the accused persons to require them to be called upon to make a defence. Consequently, I find that each accused has a case to answer and are called upon to make an election in line with the provisions of Section 306 (2) of the Criminal Procedure Code.

RULING DATED AND DELIVERED AT SIAYA THIS 6TH DAY OF DECEMBER, 2024.

D. KEMEI

JUDGE

In the presence of:

Paul Simiyu Watitwa.....1st accused

Davis Wabomba Okumu.....2nd Accused

Timothy Wanyonyi.....3rd Accused

Lawrence Wafula.....4th Accused

Mugalafor All Accused

M/s Kerubo.....for Prosecution

Kizito/Ogendo.....Court Assistant

