

REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E150 OF 2021

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION.....
REPUBLIC

AND

ANTONY MUKABWA KURULISHI..... 1ST
ACCUSED

NATHAN MUTEKWA
MUKABWA.....2ND ACCUSED

RULING

1. The accused persons herein are jointly charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the charge are that on the 7th day of December 2021, at Shirakaru Sub-location in Kakamega Central Sub-County within Kakamega County, unlawfully with others murdered ATANUS YESWA MAKOKHA.
3. The accused persons were arraigned in court and on 1st February 2022, they took a plea where they pleaded not guilty to the charge of murder.
4. The prosecution, in support of its case, called a total of ten witnesses in support of its case.
5. The prosecution closed its case, which has now left the court to determine if the prosecution has established a prima facie case sufficient to place the accused person on their defence.
6. It is a settled principle of criminal law that the burden of proof lies squarely on the prosecution and remains so throughout the trial. This fundamental right is anchored in Article 50(2)(a) of the

Constitution of Kenya, which guarantees every accused person the right to be presumed innocent until the contrary is proved.

7. In line with this constitutional requirement, the Court must not at any stage shift the burden to the accused to establish their innocence.

8. The test for establishing a prima facie case was well articulated in the landmark case of **Ramanlal Trambaklal Bhatt v. R [1957] EA 332**, where the court stated: *“A prima facie case is not one which must necessarily result in a conviction if uncontradicted. It is one on which a reasonable tribunal, properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defence.”*

9. This principle has been consistently applied by Kenyan courts. In **Republic v. Jagjit Singh Sigha & Another [2021] eKLR**, the High Court emphasised that:

“At the close of the prosecution’s case, the court is only concerned with whether the evidence presented discloses a case that calls for an answer from the accused; it is not concerned with whether the evidence has proved the charge beyond reasonable doubt.”

10. The statutory basis for a submission of no case to answer is to be found under section 306(1) of the Criminal procedure code It provides that: ***“When the evidence of the witnesses for the Prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of the***

several or any one of the several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.”

11. Having carefully considered the evidence on record, including the testimonies of all ten prosecution witnesses, and without making any definitive conclusions on the strength or credibility of that evidence, I am satisfied that the prosecution has established a prima facie case against both accused persons.
12. The evidence presented, if left unchallenged, could lead a reasonable tribunal properly directing itself on the law and the facts to return a verdict of guilty. Accordingly, I find that each accused persons have a case to answer.
13. It is so ordered.
14. Hearing on 20.1.2026.

DATED SIGNED, and DELIVERED in open court at KAKAMEGA THIS 7TH DAY OF OCTOBER, 2025.

S.N. MBUNGI

JUDGE

IN THE PRESENCE OF;

CA: Angong'a

Ms Muye holding brief for Mokeira for accused present.