



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Munji (Criminal Case 46 of 2019)  
[2025] KEHC 15678 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15678 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL CASE 46 OF 2019  
JRA WANANDA, J  
OCTOBER 31, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JONATHAN WALIMOLI MUNJI ..... ACCUSED**

**RULING**

1. The accused person is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on 28/07/2019 at Mirembe village, Kongoni Sub-Location, Lukuyani sub-County, within Kakamega County, she murdered one Stanley Tenge Wanyoba.
2. The accused is represented by Ms. Mercy Kiptoo, Advocate. He took plea on 17/09/2019 before H. Omondi J (as she then was), and pleaded not guilty. The trial eventually commenced on 3/12/2022 in which the Prosecution called 7 witnesses. PW1-3 testified before H. Omondi J (as she then was), upon whose elevation to the Court of Appeal, the matter was taken over by E. Ogola J, before whom PW4 testified. Upon E. Ogola J's transfer from Eldoret, I took over the matter and heard the testimony of PW5-7. Needless to state, directions under Section 200(3) of the Civil Procedure Rules were taken at all the times when a new Judge took over the matter. In all instances, the defence, with the concurrence of the Prosecution, elected to proceed with the case before the new Judge from where it had stopped.
3. PW1 was Margaret Wanjala, who testified that she is a grandmother to both the deceased and the accused, as the two are step-brothers. She stated on 28/07/2019 at about 11.00 am, she was seated at her gate which is next to the road when she saw the accused approach armed with a piece of metallic object which he then used to hit the deceased who had been sitting on the road. She stated that the deceased stood up, bleeding from the head, and started to walk away as the accused followed him. In cross-examination, she stated that the deceased had come to visit her, that there was no fight between the two as the accused just approached and hit the deceased. She then added that the two had a land



- dispute. In a somewhat contradictory testimony, she appears to have changed tune by stating that there was actually a fight between the two, and that the deceased's father also came and joined the deceased in beating up the accused. She agreed that she did not witness the deceased being stabbed.
4. PW2 was Esther Simuli Wanyoba, the deceased's wife. She testified that on 28/07/2019, she was in church and had left the deceased at home, when her aunt came over at 2.00 pm and informed her that the deceased had been assaulted and was lying down along the road. She stated that she went to the scene where she found a crowd, she got a motor-cycle and took the deceased to the hospital but the deceased was pronounced dead on arrival. She testified that the deceased had injuries on the head and a stab wound on the side of the abdomen and the toe. She confirmed that the accused is her brother-in-law and had squabbles with the deceased.
  5. PW3 was Metrine Kadogo Kiya Korir, the deceased's mother. She testified that she attended the post-mortem exercise and identified the body, and that the injuries she noticed on the body of the deceased were a cut on the head and all over the body, and blunt force trauma on the head, and also injuries on the abdomen, thigh and back of the head.
  6. PW4 was Alexander Kimeli Arap Ruto who stated that she was a neighbour to both the accused and the deceased. He testified that on 28/07/2019, a Sunday morning, he was at home when the deceased appeared bearing injuries on the head and soon thereafter, the accused emerged, armed with a sword and an iron bar. He stated that the accused stated that he had been looking for the deceased and he had to deal with him on that day, that the accused then stabbed the deceased with the sword at the heart area, and the sword went in deep and even ended up protruding at the back. PW4 testified that the incident happened near the gate, that he ran and informed the village elder of the incident, and when he returned with the elder, they found the deceased lying down, they informed the police who came and took the deceased to hospital but who died on the way. In cross-examination, he, too, stated that the accused and the deceased were step-brothers, and that they were involved in a land dispute. Her also stated that the accused stabbed the deceased 4 times with the sword.
  7. However, the witness then contradicted himself when he changed tune and stated that the deceased was killed by villagers. At this point, Prosecution Counsel Ms. Okok, remarked that the witness should be declared a hostile witness, which statement was however opposed by Ms. Kiptoo. E. Ogola J then examined the witness, who reiterated that the deceased was killed by villagers. The Judge then recorded that the witness was not coherent and his testimony did not add up. The Judge thus left the matter at that.
  8. PW5 was Dr. Denis Nanyingi, a Medical Officer from Kitale County Referral Hospital. He testified that he is the one who performed the post mortem on the deceased, a 36 years old man, on 6/08/2019. He stated that according to the police report, the deceased was involved in a fight in which he was stabbed and bled to death. He stated that externally, the body had bruises on the anterior surface of the both knees, and on the left temporal aspect of the head and forehead, and also bite wounds on the right femur area, left upper arm and anterior aspect of the right aspect. He stated that, internally, the head had a fracture of the skull at left temporal parietal area, and haematoma at left and right temporoparietal area (from era to the torso area). He testified that on the basis of the above, he formed the opinion that the cause of death was haemorrhagic shock due to internal bleeding in the skull, and that the injury could have been caused by a blunt object. He produced the Post Mortem Report. In cross-examination, he agreed that the history given by the police did not tally with his findings. He also agreed with the theory that haemorrhage shock can be caused by various incidents, including a fall. Regarding the bites, he was emphatic that they were by a human being, and that the stab wounds were not the cause of death.



9. PW6 was Police Inspector Abubakar Kakai, formerly attached to the Matunda Police Station, the Investigating Officer in the case. He testified that upon being assigned the case on 29/07/2019, he went to the scene where he learnt that the accused and the deceased had fought for about 4 hours, during which the accused hit the deceased with a metal rod on the head and ribs and the deceased fell down, that the fight involved their two families (siblings) forming their larger polygamous family. He stated that he never recovered the murder weapon and that he learnt that the reason for the fight was that the deceased was mocking the accused for delaying to marry. He stated that the accused was also injured and was admitted to hospital. He agreed that he also learnt that the deceased had also earlier been assaulted by sisters and brothers of the accused but according to him, injuries caused by those other siblings of the accused were only bruises, which did not cause the death. In cross-examination, he agreed that he was the source of the history in the Post Mortem Form indicating stab wound as the cause of death but now realizes from the post mortem that stab wounds was not the cause. He also agreed he learnt that the accused had also reported the incident at a different police station.
10. PW7 was Roman Shikeyenze Atsango, a village elder in the area. He testified that he was at home on 28/07/2019 when at around 11.30 am, he was alerted of the fight between the accused and the deceased, and informed that the two had badly injured each other, and that the deceased had fallen down bleeding. He stated that he informed the Chief and also went to the police to report whom he went with the scene, that as they left the police station, they met the accused on his way also to the same station and whose head was so swollen that PW7 almost failed to recognize him. He stated that nearing the scene, they met people carrying the deceased on a motor-cycle, at the scene, they also found the father of the accused badly injured and they took him to hospital, and that there was so much blood at the scene. In cross-examination, he stated that he learnt that the father had been injured during the same fight. He denied hearing of any theory that the deceased had been beaten by a mob.
11. At this point, the Prosecution closed its case. Both parties then elected not to file any written Submissions on the issue of “case to answer”.

### **Determination**

12. What this Court is called upon to do is to determine whether, at this stage of the proceedings, based on the evidence adduced by the witnesses, the Prosecution has established a prima facie case to warrant the accused person to be put on his defence to answer to the charge.
13. Section 306(1) and (2) of the Criminal Procedure Code requires the Court, after closure of the Prosecution’s case, to make a determination on whether an accused person has a case to answer. The Section provides as follows:
  - “(1) 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 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.
  - (2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any



witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact

14. At this stage therefore, the prosecution is required to only establish the existence of a prima facie case, which means establishment of a rebuttable presumption that an accused person is guilty of the offence he/she is charged with. At this stage, the Court is only considering whether the accused has a case to answer. A case to answer was described by G. Dulu J in the case of Republic vs Joseph Shitandi & Another (2014) eKLR as follows:

“A case to answer is a case where if the accused keeps quiet, the evidence of the prosecution should be such that a conviction will result.”

15. The essence of determining whether an accused has a case to answer was also analyzed by J.B Ojwang J(as he then was) in the case of Republic vs Samuel Karanja Kiria (2009) eKLR, in which he stated as follows:

“The question at this stage is not whether or not the accused is guilty as charged but whether there is cogent evidence of his connection with the circumstances in which killing of deceased occurred. That the concept of prima facie case dictates as a matter of law that an opportunity created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled ... The Court of Appeal in Criminal Appeal No. 77/2006 expressed that too detailed analysis of evidence stage at no case to answer stage is undesirable if the court is going to put accused on his defence as too much details in the trial court’s ruling could then compromise the evidentiary quality of the defence to be mounted.”

16. At this stage of the proceedings, the standard of proof is therefore not yet one of proof beyond any reasonable doubt. The Supreme Court of Canada in R –v- Morabito [1949] SCR 172 drew attention to this fact when it held that:

“When assessing the prosecution case in consequence of no case submissions, the question of reasonable doubt does not arise at that stage.”

17. The trial Court is therefore cautioned that, at this stage, it should not make definitive findings should it conclude that the accused has a case to answer. In this regard, E. Trevelyan J in Festo Wandera Mukando vs Republic [1980] KLR 103, stated as follows:

“...we draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgment. Where a submission of “no case” to answer is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the court or courts concerned.”

18. What is therefore required is evidence that would prima facie establish the possible guilt of the accused and call upon him/her to be heard before final determination.

19. For the offence of murder to be proved, the Prosecution is required to establish proof of death of the deceased and the cause thereof, proof of an unlawful act or omission on the part of the accused resulting in the death of the deceased, and malice aforethought on the part of the accused. In this case, that the deceased died is not in dispute. Regarding cause of death, although there could be an issue of a stab



wound, the theory that cause of death was an injury inflicted on the head by a blunt object, has, at this stage, also not been seriously challenged, at least not yet.

20. Regarding the events leading to the death, the theory advanced by the Prosecution is that there was a fight between the accused and the deceased, step-brothers, which fight was said to have been an off-shoot of their larger polygamous family fight which had begun earlier on the same day, and as a consequence, the accused allegedly hit the deceased on the head leading to bleeding in the head and eventually his death. There is testimony which possibly places the accused person at the scene of the crime. There is also testimony of alleged eye-witnesses, including close family members, who also testified to the motive and/or cause of the fight. As aforesaid however, I must caution myself that, at this stage, I should not make definitive findings should I conclude that the accused has a case to answer.
21. With the above caution in mind, I only state that considering the testimonies of the witnesses, and without delving into an in-depth analysis of such testimonies, I am satisfied that the Prosecution has established, to an acceptable standard, a prima facie case against the accused person to warrant his being put on his defence. As aforesaid, this does not at all mean that the accused has been found guilty, but merely means that there is some evidence of his connection with the circumstances in which the death occurred. I therefore find that the accused - Jonathan Walimoli Munji - has a case to answer, and he is accordingly put on his defence.
22. Pursuant to my findings above, the accused is now informed of his rights under Article 50(2)(i) and (k) of *the Constitution*, and also under Section 306(2) as read with Section 307 of the Criminal Procedure Code, to address the Court. Accordingly, he is informed and it is explained to him, in the presence of his Advocate, that he has a right to address the Court either personally, or by his Advocate, and to give evidence on his own behalf or to give unsworn statements, and to call witnesses in his defence.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 31<sup>ST</sup> DAY OF OCTOBER 2025.**

.....

**WANANDA JOHN R. ANURO**

**JUDGE**

Delivered in the presence of:

The Accused (present physically in open Court)

N/A for Advocate for the Accused

Ms. Muriithi for the State

C/A: Brian Kimathi

