



REPUBLIC OF KENYA



**Director of Public Prosecution v Wanalo (Criminal Case E147 of 2021)
[2025] KEHC 16812 (KLR) (18 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16812 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E147 OF 2021
S MBUNGI, J
NOVEMBER 18, 2025**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION PROSECUTOR

AND

PAMELA MAKOKHA WANALO ACCUSED

RULING

1. The accused was charged with murder contrary to section 203 as read with section 204 of the penal code.
2. The particulars are that on the 22nd November, 2021, at Ebukubi village, Shikalame location in Mumias West Sub-County within Kakamega county, murdered Alice Ambunya Obadiah was murdered.
3. The accused person took a plea on 1st December 2021, where she pleaded not guilty, and the matter proceeded for a hearing.
4. In support of its case, the prosecution called 7 witnesses and upon the testimony of the last witness, the prosecution closed its case.
5. The Court is called upon to determine whether the prosecution has established a prima facie case sufficient to warrant placing the accused person on her defence, pursuant to section 306(2) of the Criminal Procedure Code, which states that:
 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.

3. If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or 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 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.”
6. A prima facie case is established where the evidence tendered by the Prosecution is sufficient on its own for a court of law to return a guilty verdict even if the accused opts to remain silent.
7. In *Republic v Abdi Ibrahim Owi* [2013] eKLR, the court defined a prima facie case as follows:

‘prima facie’ is a Latin word defined by Black’s Law Dictionary 8th Edition as, “sufficient to establish a fact or raise a presumption unless disapproved or rebutted”.
8. The burden of proof lies on the prosecution throughout the trial. That burden of proof does not shift to the accused person to prove his innocence. That is the only way a fair trial of the accused person can be guaranteed, as stipulated in Article 50 (2) of *the Constitution*.
9. The standard of proof in criminal cases is that of beyond a reasonable doubt. Nonetheless, that standard is not applicable at this stage, where the prosecution is only expected to have established a prima facie case against the accused person to warrant him to be placed on his defence.
10. From the prosecution’s witness, the accused, who was the last person seen with the deceased, she had some dispute with the deceased over money and was found dead a few hours later. The post-mortem stated that the cause of death was blunt force trauma following an assault. The DNA samples at the crime scene were identical to the deceased, and the need for the accused to defend herself as to her whereabouts during the crime to possibly absolve her from the offence.
11. The trial court is cautioned that at this stage, it should not make definitive findings should it conclude that the accused has a case to answer.
12. In *Festo Wandera Mukando v Republic* [1980] KLR 103, the court held 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 extreme cases, 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 of the case or the court or courts concerned.
13. Having considered the material placed before me, I am satisfied that the prosecution has established a prima facie case for a finding that the accused has a case to answer. As to whether the said evidence



on record meets the threshold for convicting the accused is a matter that will have to be considered at the end of the trial.

14. I accordingly place the accused on her defence.

15. It is so ordered.

16. Defence hearing on 17.3.2026.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 18TH DAY OF NOVEMBER, 2025.

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

Ms Otsyeno for the Accused, present.

