

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL NO. 12 OF 2017**

**REPUBLIC ..... PROSECUTOR**  
**VERSUS**

**GEOFFREY KIBET alias KIMETTO .....1<sup>ST</sup> ACCUSED**  
**JESSICAH CHEROTICH TOWETT .....2<sup>ND</sup> ACCUSED**

**RULING ON CASE TO ANSWER**

1. **Geoffrey Kibet** alias **Kimetto** and **Jessicah Cherotich Towett** hereinafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> accused respectively stand charged with murder contrary to section 203 as read with section 204 of the penal code. The particulars being that the 1<sup>st</sup> and 2<sup>nd</sup> accused on 17<sup>th</sup> January, 2017 at Kaber village, Tinet Location in Kuresoi Sub County within Nakuru County murdered Geoffrey Lang'at.
2. Both accused denied the charge and the case proceeded to full hearing with the prosecution calling six (6) witnesses. Upon closure of the prosecution case Ms Emma Okok counsel for the prosecution said she would not be filing any submissions. Mr Murunga for the accused filed written submissions.
3. None of the six (6) witnesses presented by the prosecution was an eye witness. PW3 - Dr Biketi conducted the post mortem on the deceased's body, after it was identified by Emmanuel Kiptop (PW2) and Peter Magut. He found the cause of death to be accumulation of blood in the heart through the

chest because of the deep stab wound on the chest wall which extended to the ribs causing massive bleeding. He produced the post mortem report as Exhibit 1.

4. PW1 - **Daniel Samoei Kipkemboi** is the deceased's father. He only received a report on what had happened to the deceased. He rushed to the scene and confirmed it.
5. PW2 **Emmanuel Kiprop Lang'at** who is the deceased's brother said accused 1 was his biological father, while PW1 said he was the deceased's father. This witness only explained to Court what happened on 24/12/2016 which is not related to the incident in question. He too never witnessed the incident. He however saw a knife next to the body and the knife was taken by the police.
6. PW4 **Irene Chepkemoi Rono** said she did know the deceased later. She says he was teacher Geoffrey. She stated that on 18/01/2017 at 7 a.m. she was called by a neighbour called Mercy (who never testified) who asked her to go and see a teacher who was lying near the 2<sup>nd</sup> accused's home. They found the deceased's body and she ran to the 2<sup>nd</sup> accused's house and woke her up. The 1<sup>st</sup> accused was present in the said house and they went to the scene together.
7. It was her evidence that when they reached the scene both accused ran away in different directions for reasons unknown to her. A crowd arrived and there were screams all over. The body was later taken away by police from Keringet.
8. In cross - examination she said her house was 20 metres from that of the 1<sup>st</sup> accused but she never heard any noises from that house the previous night or in the morning.

9. PW5 **Beatrice Chepkemoi Towett** a sister to the 2<sup>nd</sup> accused said the accused persons lived together as husband and wife. She testified that on 17<sup>th</sup> January, 2017 at 9 p.m. she left her house for the accused's house. On the way she met the deceased and together they went to the accused's house. They found two men calling out on the 2<sup>nd</sup> accused to wake up. One was Geoffrey (2<sup>nd</sup> accused's neighbour). She woke up and gave the neighbour a cigarette and he left.
10. Thereafter PW5, the deceased and the 2<sup>nd</sup> accused went to the kitchen. While there the 2<sup>nd</sup> accused gave the deceased the changaa, he had asked for. The deceased then bought for her and 2<sup>nd</sup> accused changaa. Before she left a couple arrived and she left them all there. This couple (Vincent Maritim and Jackline Maritim) never testified in this case, same to the neighbour called Geoffrey. She said when she left the 2<sup>nd</sup> accused was already drunk and lay in the kitchen.
11. The next day at 6.00 a.m. the 2<sup>nd</sup> accused came to her house and told her the deceased was lying dead on the field. She did not go there, but later they were taken to Olenguruone police station by police officers who had come for them.
12. In cross examination she denied ever seeing the 1<sup>st</sup> accused that night. On being locked up she said the 2<sup>nd</sup> accused had told her she had seen the 1<sup>st</sup> accused chasing the deceased. In re - examination she reiterated that she never saw the 1<sup>st</sup> accused that night when she was at the house of the 2<sup>nd</sup> accused.
13. PW6 **Susan Wanjiru Ngugi** of the Government Chemist Nairobi introduced herself and gave her qualifications. She said on 23<sup>rd</sup> June, 2017 an officer Corporal Dismas Kambo

F/No. 81313 from Keringet police station brought them several items namely:

- Beige Jacket (MFI 2).
- Brown Jacket (MFI 3).
- Mafin hood (MFI 4).
- Knife with a broken handle (MFI 5).
- Knife with a broken handle (MFI 6).
- Dry leaf in an envelope (MFI 7).
- Blood sample of Geoffrey (Accused 1) - (D-1).
- Deceased's blood sample (B-6).

14. Upon examination of the exhibits she found as follows:

- MFI 2, 5, 6 & 7 were stained with human blood.
- MFI 3 & 4 did not have any blood stains.
- The deceased's blood did not generate any DNA profile, same to the blood on the two knives.

15. Her conclusion was that:

- i) The DNA on MFI 2 & 3 matched, the DNA of the 1<sup>st</sup> accused's blood sample.
- ii) The DNA generated from B2 was from an unknown male.
- iii) The DNA on MFI 7 was from an unknown female.

She produced her signed report of 22<sup>nd</sup> April, 2021, as Exhibit 8a. The Exhibit memo was marked MFI 8b.

16. In cross examination she said the blood on the knives did not generate any DNA profile. This was because of poor storage before it was brought to them. Further that the unknown DNA generation of a male means the presence of another male at the scene. It was therefore not clear as to whom the blood belonged.

17. The firm of Murunga Mwangi & associates for the accused filed submissions dated 18<sup>th</sup> September, 2025. Counsel gave a summary of the evidence of the six prosecution of witnesses.

On whether the prosecution had proved a prima facie case counsel answered in the negative. He referred to the case of **Ramanlal Trambaklal Bhatt V Republic [1957] EA 332** where the Court of Appeal stated as follows:

*“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one, which on full consideration might possibly be thought sufficient to sustain a conviction.”*

18. It is counsel’s submission that no eye witness testified. That the circumstantial evidence adduced was not sufficient to uphold a conviction. He referred to the cases of; (i) **Republic C William Ondawa Wambani [2013] KEHC 480 KLR** where it was held:

*“presence at or near a crime scene, without more, cannot ground a conviction”*

**In Topper V Republic [1952] AC at page 489** which he also referred to it was stated:

*“Circumstantial evidence must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another. It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure*

*that there are no other co - existing circumstances which would weaken or destroy the influence."*

Also see **Republic V Kepkering Arap Koske & another 16 EACA 135.**

19. Counsel pointed out that the investigating officer did not testify, yet he is a key witness. On this he referred to the case of **Bukenya & Others V Uganda [1972] E.A. 549.** He urged the court to draw an adverse inference from the failure to avail the investigating officer yet he was the one co-ordinating all the evidence in this case.

### **Analysis and determination**

20. I have carefully considered the evidence on record, the submissions by the defence, the cited authorities & the Law. The issue I find falling for determination is whether the prosecution has made out a case to warrant the accused persons being placed on their defence.

21. What then is a prima facie case?

In **Republic V Abdi Ibrahim Owl [2013] eKLR** this is what the court defined it as:

**"Prima facie"** is a Latin word defined by Black's Law Dictionary, 8<sup>th</sup> Edition as "Sufficient to establish a fact or raise a presumption unless disproved or rebutted". **"Prima facie case"** is defined by the same dictionary as "The establishment of a legally required rebuttable presumption". To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with. In **Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335**, the court stated as follows:

*“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction.” This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence”. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence..... It may not be easy to define what is meant by a “prima facie case”, but at least it must mean 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.”*

22. The prosecution always has the burden to prove a prima facie case in criminal matters. This burden has never shifted.
23. In the present case there is no eye witness who testified. The prosecution therefore relied on circumstantial evidence to establish its case. How strong was this circumstantial evidence? Did it place the accused persons or any of them at the scene? And where was this scene?
24. PW1 in his evidence stated that he received the report of his son’s death on 18/2/2017 without stating the time. He further

stated that he rushed to the scene and found the deceased's body on the 2<sup>nd</sup> accused's farm. Further that the body lay outside the 2<sup>nd</sup> accused's house i.e. 5 meters from the said house. It was stated that police came to the scene and took away the body. This means the police were aware of where the scene was but none of them including the investigating officer testified to tell the court where the scene was and where they found the body of the deceased. Was it near the 2<sup>nd</sup> accused's house as claimed by PW1?

25. PW4 said she was called to the scene and she accompanied the person who called her. This witness only saw the deceased's body and ran to call the accused persons as the 2<sup>nd</sup> accused's house was not far from there as it was 20 meters away. On the other hand PW1 said the 2<sup>nd</sup> accused's house was 5 meters from the scene. These contradictions would have been sorted had the police officers and investigating officer testified.
26. The same PW4 at first said she had not known the deceased before the incident. Later in her evidence she said the two accused persons and the deceased lived together. How did she know that?
27. PW5 who is a sister to the 2<sup>nd</sup> accused stated that - on the night of 17/01/2017 she left the deceased in the house of the 2<sup>nd</sup> accused alongside Vincent Maritim and his wife Jacqueline. By then the 2<sup>nd</sup> accused lay in the kitchen as she was already drunk. Vincent & Jacqueline were never called to tell the court what transpired while they were at the house of the 2<sup>nd</sup> accused. PW5 was categorical that she never saw the 1<sup>st</sup> accused that night.

28. PW6 from the Government Chemist informed the court of items that were taken to them for examination by an investigating officer. The witness could not explain the origin of all these items since they were just brought to them by the said investigating officer for examination. The report by this witness Exhibit 8a is of no assistance in this matter since whoever recovered them never testified to show from where and how he got them.

The said items not having been produced as exhibits are of no probative value in this case.

29. Upon considering the evidence before this court I find that the case was very poorly investigated. There is no evidence adduced that directly points to the accused persons as the perpetrators of this offence. PW1 had tried to say what his wife told him about the 1<sup>st</sup> accused and the deceased struggling over the 2<sup>nd</sup> accused. There was no such evidence placed before the court and more so, the wife of PW1 never testified.

30. All in all, I find that the prosecution has failed to adduce sufficient evidence pointing at the accused persons as the killers of the deceased. Placing them on their defence would be an exercise in futility. For my part I find no prima facie case made out against both accused persons who I hereby acquit under Section 306 (I) of the Criminal Procedure Code. They shall be set free unless otherwise lawfully held under separate warrants.

31. Orders accordingly.

**Delivered, dated and signed this 12<sup>th</sup> day of November,  
2025 in open Court at Nakuru.**

**H. I. ONG'UDI  
JUDGE**