



REPUBLIC OF KENYA



**Republic v Rotich (Criminal Case E005 of 2025)
[2025] KEHC 16374 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16374 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
CRIMINAL CASE E005 OF 2025
RPV WENDOH, J
NOVEMBER 12, 2025**

BETWEEN

REPUBLIC STATE

AND

EVANS ROTICH ACCUSED

RULING

1. Evans Rotich, the Accused herein, faces a charge murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the charge are that on 19/2/2025 at Kamelei, in Pokot South sub county, in West Pokot County, murdered one Benjamin Angasiam.
3. The accused denied committing the offence and the case proceeded to hearing with the prosecution calling a total of eight (8) witnesses.
4. PW1 Korikwang Angasiam told the court that on 19/2/2025, his son came home to inform him that his brother Benjamin Angasiam alias Marda had been killed. He saw the body at Kapenguria mortuary when post mortem was done and he was informed that he died of a gunshot Wound. PW1 denied knowing the accused.
5. PW2 William Renaluk, recalled that on 24/2/2025, he attended a post mortem on the body of the son of Angasiam and that the deceased died of a gun shot wound. PW2 said that the deceased was his brother's son. He did not know how the deceased died.
6. PW3 Lilian Seromuk a National Police Reservist recalled that on 19/2/2025, one Mama Rotich informed her that her son, Rotich had killed somebody. PW3 informed the Assistant Chief, Kamelei. PW4 Benjamin Kelan. She went to the house where the deceased's body was lying and saw the body. She did not know how the deceased met his death.



7. PW4 Benjamin KelaN is Assistant Chief Kamelei Sub Location. On 19/2/2025, he was informed by Lilian (PW3) that she had information that Benjamin had been killed and the body was in an abandoned house. He found the deceased's body in the said house and reported to the police who collected the deceased's body. He knew the accused and his mother. He did not witness the murder.
8. PW5 David Liman a National Police Reservist, was informed of Benjamin's death by Lilian (PW3) and they reported to the Chief and later found the deceased's body. They later went in search of Rotich. They met Rotich about 5.00p.m., arrested him and took him to Kapenguria Police Station. They also met the accused's mother who was also taken to the police station.
9. PW6 Jackson Pkemoi Lemangole a Police Reservist recalled the 19/2/2025. He was at Kamelei Centre when he and another were told to look for Rotich who was a murder suspect. They found Rotich who had some scratches on the face; the people at Kamelei had threatened to harm him and so they took him to Kapenguria Police station.
10. PW7 is DR. John Chirchir who performed the post mortem on the body of the deceased on 24/2/2025. He found the deceased to have a penetrating bullet wound on the right forehead with an exit wound at the right occipital region. On opening the head, he found that the skull was fractured and the brain was injured. He formed the opinion that the cause of death was severe head injury due to penetrating injury from a bullet.
11. PW8 P.C. Thomas Chumakemer of Kabichbich Police Station received information of a murder incident at Kamelei. He proceeded to Kamelei and found the deceased's body in a house in a pool of blood. He found two suspects of murder held by the police. From his investigations, he learnt that accused's mother learnt from accused about him killing somebody. He got information that the deceased used to live with Accused's mother as husband and wife and the relationship with accused was not good.
12. PW8 told the court that Accused's mother was only arrested for purposes of protecting her from the public.
13. At the close of the prosecution case, this court is called upon to determine whether the prosecution has established a prima facie case to warrant the Accused to be placed on his defence.
14. What is a prima facie? 'Prima facie' is a Latin word defined in Black's Law Dictionary 8th 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” that an accused person is guilty of the offence he has been charged with. The definition was better explained in the case of

15. Ramanlal Trambaklal Bhatt -V- Republic (1957) EA 332 at 334-335 where the court stated “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 is 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”.

16. The offence of Murder is defined in Section 203 of the Penal Code as “Any person who with Malice aforethought causes death of another person by an unlawful act or omission is guilty of Murder”.

The three ingredients that need to be proved in a charge of Murder are

1. Proof of death;
2. Proof that the accused caused the unlawful act or omission that led to the death;
3. Proof that accused had malice aforethought.

17. Proof of death:-

There is no doubt that the deceased Benjamin Angasiam died. His body was found in an abandoned house where he used to sleep. On 19/2/2025, PW2, 3,4,5,6 and 8 all saw the deceased’s body lying in the house.

18. PW1 and 2 attended the post mortem and identified the body of the deceased.

19. PW7, the doctor who performed the post mortem confirmed that the deceased died from a gun shot to the head which fractured the skull and damaged the brain. The deceased did not die of natural consequences.

Whether accused caused the unlawful act or omission that led to the death;

20. None of the witnesses who testified before this court witnessed the murder. It all began with PW3 alleging that Accused’s mother told her that accused had confessed to her that he killed the deceased. The mother of the deceased could not be traced to testify. There is neither direct nor circumstantial evidence connecting the Accused to the offence. The testimony by the Investigating Officer that accused had disagreed with deceased is mere hearsay and suspicion however strong cannot found a conviction.

21. For all the above reasons, I find that the prosecution has not established a prima facie case against the accused to warrant him being placed on his defence. Accused is hereby acquitted under section 306(1) of the Criminal Procedure Code for lack of evidence. He is set at liberty forthwith unless otherwise lawfully held.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAPENGURIA THIS 12TH DAY OF NOVEMBER, 2025.

R. WENDOH

JUDGE

In the Presence of:-

Mr. Mokaya – Prosecution Counsel

Mr. Lowasikou for accused

Accused – present

Juma/ Hellen Court Assistants

