



**Republic v Kiplagat (Criminal Case E009 of 2023)
[2025] KEHC 16914 (KLR) (21 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16914 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
CRIMINAL CASE E009 OF 2023
JRA WANANDA, J
NOVEMBER 21, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SHARON JEROTICH KIPLAGAT ACCUSED

RULING

1. This is a Ruling on whether the accused person has a case to answer.
2. The accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on 02/07/2023 at Korkitony Sub Location, Keiyo North Sub County, within Elgeyo Marakwet, she murdered one Stanley Kimwetich.
3. The accused, who is represented by Ms. N. Too Advocate, took plea on 26/07/2023, denied the charge and a plea of not guilty was entered. The trial then commenced on 17/01/2025 in which the Prosecution called 8 witnesses, and closed its case on 30/07/2025.
4. PW 1 was Caroline Chepchumba, who introduced herself as a sister-in-law to the accused person as the accused was the wife to the deceased, Stanley Chemwotich. She testified that on 2/07/2023 around 8.00pm, she was at home with her children and the accused person's children because the accused was not at home, when suddenly, the accused person's eldest daughter heard the voice of the accused from their home, about 10 meters away. She stated that they went to check and saw the accused as there was sufficient moonlight and the two houses were only separated by a fence with droppers. She stated that the accused also approached the fence from her side, the eldest child climbed over the fence while the others remained at the fence, and she (PW1) returned to her house. She stated that suddenly, she heard the children screaming and when she rushed back outside to check, the children told her that the deceased, the accused's husband, wanted to beat the accused, their mother, and that she (PW1) saw the deceased standing in the compound, and he did not have any weapon. She testified that she asked



what the problem was, but the accused did not respond and she (PW1) went back to her house. She testified further that about 5 minutes later, she heard more screams from the children and when she went back to check, she heard the deceased ask the accused “what time is it now”, that her other sister-in-law, Ruth Chebet, who also lives within the compound, also came running and joined them, but after some time, PW1 and Ruth left. She stated that after a while, she heard the accused’s phone ringing and when the accused picked the call, she started narrating to the caller about the ongoing quarrel, and the accused, the deceased and their children left and entered their house. PW1 testified that after about 10 minutes, she heard the accused screaming from inside their house that “huyu ameniua” and “mama nimekufa”. PW1 testified that when Ruth and herself again ran out to check, they saw the deceased coming out of the house with his hands folded over his chest, the accused was close behind holding something in her right hand and showing signs of stabbing someone although PW1 did not establish what the accused was holding. PW1 stated that she saw the two clearly as there was sufficient moonlight at that time, that when Ruth tried to intervene, the accused attacked Ruth who fell down, when PW1 asked the deceased, who was leaning on a wall, what had happened, the deceased responded “Sharon ameniua”, and that all this time, Ruth was still on the ground, and the accused was still beating her with two sticks, while her in-laws were watching from the fence as the accused had blocked the gate. PW1 stated that the deceased had fallen down and was not talking, and when she (PW1) shouted that the deceased “was dying”, the brothers and cousins of the accused managed to overpower the accused, opened the gate and entered the compound. PW1 testified that when she moved nearby, she noticed that the deceased was bleeding heavily from the neck. In cross-examination, she stated that the accused used to return home late, behaviour which irritated the people around. She also stated that when the deceased fell down, she smelt alcohol from his breath.

5. PW2 was Monicah Cheruto Kipkore, the mother to the deceased. She testified that on 2/07/2023, she heard children crying outside the deceased’s house which was about 70 meters away, when she went outside to check from her compound, she heard the deceased ask the accused “why she was returning home late”, and PW2 could see them as they were outside the house, which is nearby. She stated that she went back into her house and then heard the deceased crying out loudly, three times, that “he was being killed”, and although her view was obstructed by a stone, she heard her son shout “mother I have died”. She stated that she ran to the deceased’s house where she found the deceased leaning over with his hands folded, and he was bleeding from his neck, and in pain, and he had a stab wound on the neck. She testified that the accused was checking the surrounding ground with a phone torch, and when the deceased saw this, he attempted to flee but fell down, face up, PW2 screamed and people, including her other sons’ wives came, and the accused who had entered her house then came out of the house with sticks. She then stated that the accused, when confronted, ran to the maize farm, the deceased was taken to hospital, but she was later informed that he had died. In cross-examination, she, too, stated that the accused used to habitually return home late.
6. PW3 was Benjamin Chemweno. He stated that on 2/07/2023 when he returned home, at around 8.00 pm, he asked his wife why she had not yet milked the cows and she responded that it was because she had heard screams from a neighbour’s home and she had thus gone there as a death had occurred in that home. PW3 testified that he, too, then heard the screams from the home, he ran there, about 200 metres away, and when he reached the home, he found the deceased, also known as “Brownie” lying on the ground, and there was a crowd. He testified that he passed his hands over the deceased’s eyes but who did not respond, that he was among the people who then took the deceased to hospital but who, after sometime, was pronounced dead. He stated that he learnt that the deceased had been stabbed on the left side of the neck and chest, but he did not know who had committed the act. In cross-examination, he confirmed that he had, in his Statement, stated that the couple used to have fights, the reason being the accused’s habit of returning home late while drunk.



7. PW4 was Ruth Chebet who testified that on 2/07/2023, she was at home with her mother (PW2) and father, when at around 8.00 pm, as they were asleep, she heard children screaming and she ran out of the house to her brother, Erick Kibowtts' house. She stated that Erick was away but his wife (PW1) was home, that the house is on the same family land but in a different compound, and that they established that the screams were emanating from the house of her other brother, the deceased herein (Stephen Kimwetich), also known as "Brownie", about 50 metres away. She testified that PW1 told her that the accused had again come home late, that as they were still there the screams stopped but she then heard the deceased shouting, PW4 climbed over the vegetation fence and found the deceased standing outside the kitchen with his hands folded over his chest. She also stated that earlier as was she was still standing outside, she had heard the deceased quarrelling the accused about her late home-coming. PW4 stated that when she got there, she repeatedly asked the deceased what the issue was but he did not respond, and she realized that the deceased was bleeding heavily from the neck and chest. She testified that the accused then emerged from the kitchen carrying a stick in each hand and hit PW4 with them, and assaulted her by pulling her hair, a struggle ensued and PW4 fell down but managed to stand up and fled screaming. She then identified the accused seated in the dock and stated that the accused had been married to the deceased for about 4 years. In cross-examination, she stated that she did not know whether the deceased was drunk at the material time
8. PW5 was Matthew Kiplagat. He testified that on 2/07/2023, he was at the local center with friends when they heard screams, he and one of the friends, using his motor-cycle, went to check where the screams were emanating from, they established that the screams were from Brownie's (deceased) family home, and when they reached there, they were instructed to carry an injured person to hospital using his motorcycle, and he recognized the injured person as "Brownie" whom he and other people then carried on the motor-cycle and took him to hospital. He stated that the deceased was not talking, and he had wounds on his neck and chest.
9. PW6 was Dr. Sharon Anyango a Medical Officer at the Iten County Referral Hospital. She stated that a post-mortem was conducted on the body of the deceased by her colleague Dr. Nixon Kiprotich, whom she had worked with for about 4 years, and whose handwriting and signature she was familiar with but who was at that time away attending to some emergencies. Upon her request, she was allowed to testify on behalf the said Dr. Nixon Kiprotich. She then stated that the post-mortem was conducted on 07/07/2023, that externally, the deceased was very pale which was a sign that he had lost a lot of blood, and he had five penetrating stab wounds, to the left arm measuring 5 x 1.2 cm x 3, to the pericardium (through the heart) measuring 1 x 2 cm, to the left of the neck penetrating the carotid artery (main supplier of blood to the brain) measuring 2 x 25 cm x 1, to the left shoulder measuring 2 x 1 x 0.5 cm, and to the left sub-scapula measuring 1 x 2 x 3. Internally, she testified that the lungs had collapsed with blood accumulation in the chest, and in respect to the heart, the main vessels coming therefrom had been cut or penetrated. She stated that the cause of death was excessive bleeding that led to shock (hypovolemic shock due to haemorrhage as a result of the penetrative stab wounds). She stated further that blood was taken for analysis, and she then produced the post mortem Report. In cross-examination, she stated that no indication that the deceased was intoxicated at the material time was found.
10. PW7 was David Kiara Muthoni from the Government Chemist Laboratory in Kisumu under the DNA Section. He stated that he received 2 samples under the escort of Sgt. Peter Kosgei, from the DCI Keiyo, the first being blood samples from the deceased in a vacutainer, and the second, a kitchen knife with a broken blue handle in an envelope, and which was moderately stained with blood of human origin. He testified that the DNA profile generated from the items was tabulated, and that the DNA profile generated matched that of the deceased and of the blood on the knife.



11. PW8 was Sergeant Peter Kosgei the Investigating Officer in this matter, and previously attached to the DCI, Keiyo. He testified that on 2/07/2023 at around 9.30 pm he received a call from his superior who instructed him to go to the station as a phone call had been received from the Chief, Korkitony Location that someone had been killed in the area. He stated that, together with other Officers, he went to the area and the Chief directed them to the home of the deceased where they found a crowd and learnt that the deceased had been stabbed with a knife severally by the wife, and he had been rushed to hospital. He testified when he inspected the kitchen where the incident was alleged to have occurred, he found a blood-stained kitchen knife with a blue handle which he believed to have been the murder weapon, and that the kitchen had visibly been disturbed with utensils scattered all over. He stated that he later went to Chebyemit hospital where the deceased had been rushed where he was informed that the deceased had died. He also stated that, while at the hospital, he also learnt that the accused had surrendered herself at the police station, he went to the station and took the accused to Iten Police Station, he later recorded statements of the witnesses, including a plain statement from the accused person, and later, after the post mortem, he surrendered the knife and blood samples to the Government Chemist. He stated that he learnt from the statement recorded by the accused that the accused quarreled with the deceased (husband) for returning home late, and that is what led to the fight that led to the death. He testified that the accused claimed to have stabbed the deceased only once, but it was later established that the stabs were multiple. He testified further that when he collected the accused from the station, apart from complaining of some pain in her waist, she appeared normal. He also stated that he later received a Report from the Government Chemist establishing that the blood on the recovered kitchen knife matched with the blood sample taken from the deceased and he then produced the knife. In cross-examination, he agreed that he had no eye-witness to the incident, but stated that he learnt that it occurred around 8.00 pm. When shown the statement recorded by PW2, the mother of the deceased, he agreed that according to the statement, the accused had reported to PW2 about threats made by the deceased to the accused and her child. He also conceded that he never took any blood samples from the accused to establish whether it matched that on the kitchen knife. Regarding the statement he took from the accused person, he reiterated that it was a plain (voluntary) statement. He denied that the accused surrendered only to save herself from threats of mob justice, and also, he did not find any indication that the deceased was drunk at the material time. He also agreed that the homestead had no electricity. In re-examination, he refuted the possibility that the deceased may have been stabbed by several people, and also stated that he did not establish the existence of any serious disagreements between the couple prior to the stabbing.

Determination

12. Under Section 306 of the Criminal Procedure Code, this Court is obligated, upon close of the prosecution's case, to rule on whether a case to answer has been established against the accused. Section 306(1) and (2) provide 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 recording 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 on his own behalf or make unsworn statement and to call witnesses in his defence



13. In view thereof, at this juncture, what the Court is called upon to do is simply to determine whether, at this stage, based on the evidence adduced by the 8 witnesses, the Prosecution has established a prima facie case to warrant the accused to be placed on his defence to answer to the charge of murder. Needless to state, the burden of proof to establish the case against the accused lies on the Prosecution throughout the trial. At no point does that burden shift to the accused reason being that an accused person's constitutionally guaranteed rights include the right to remain silent, the right to adduce and challenge evidence and the right not to give any incriminating evidence. However, at this stage, the prosecution is not expected to have proved the case beyond reasonable doubt. The measure is for a prima facie case to be established.
14. At this stage therefore, the Court is only considering whether the accused person has "a case to answer", which term was aptly 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 procedure in determining whether an accused has a case to answer was discussed in the case of Republic vs Samuel Karanja Kiria (2009) eKLR where J.B Ojwang J (as he then was) stated the following:

"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. The trial court is however 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, in Festo Wandera Mukando vs Republic [1980] KLR 103, E. Trevelyan J 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, and 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 count or counts concerned."
17. Upon considering the evidence on record and testimonies of the witnesses as set out above, and without delving deeply into the merits thereof, all I would state for now is that there is testimony allegedly establishing the death and the cause thereof. There is also testimony allegedly placing the accused at the scene of crime at the material time, and also testimony alleging witness' accounts of the chain of events before and after the alleged stabbing of the deceased, including the possible altercation between the deceased and the accused, although there is no eye-witness to the stabbing itself. There is also testimony alleging that the accused was seen holding the murder weapon and that she surrendered herself to the police after the killing. The testimony on record therefore appears to implicate the accused person. I



will therefore only state my finding to be that the Prosecution has established that the accused person has a case to answer. Needless to state, this does not at all indicate that the accused has been found guilty, but merely means that there is some evidence of her connection with the circumstances in which the death occurred which calls upon her to be afforded an opportunity to give her side of the story, should she wish to do so.

18. The accused is therefore put on her defence.
19. Pursuant to my findings above, the accused is now informed of her 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, she is informed and it is explained to her, that she has a right to address the Court either personally, or by her Advocate, and to give evidence on her own behalf or to give unsworn statements, and to call witnesses in her defence.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 21ST DAY OF NOVEMBER 2025

.....

WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Accused (present physically in open Court)

Ms. Too for the Accused

Ms. Mwangi for the State

C/A: Brian Kimathi

