



REPUBLIC OF KENYA

THE JUDICIARY

IN THE CHIEF MAGISTRATE'S COURT AT NAKURU

CRIMINAL CASE NUMBER E1984 OF 2023

[A. P. NDEGE; S.P.M.]

REPUBLIC-----COMPLAINANT/
PROSECUTOR

=VRS=

JANE

MUSAMBE-----

ACCUSED

RULING

INTRODUCTION: THE CHARGE AND PROCEDURE

1. On 09.08.2023, the accused herein, was charged with the offence of Handling Food in a Food Plant without Valid Medical Certificate contrary to section 41(2) as read with section 67(1)

of the Nakuru County Public Health and Sanitation Act of 2017. The accused denied that on 04/08/2023 at about 2.32 p.m. along Kalewa Road, Queens Village bar and Restaurant, within Nakuru County, she was found operating in a bar and restaurant without being medically examined.

2. The accused person has been out on cash bail of Kshs. 10,000/-. Hearing of the prosecution case commenced on 18.09.2023 as scheduled and closed on 15.10.2025. The prosecution was able to call only 2 witnesses. The prosecution was led by **Ms. Chinga**¹ and **Macharia**², prosecution counsel, instructed by the **Director of Public Prosecutions**, who by virtue of Article 157(6) of the Constitution, exercises state powers of prosecution within the Republic of Kenya. The defence was represented by **Ms. Kiprop**, instructed by **Ndeda advocate**³.

SUBSTANTIVE FACTS OF THE CASE

3. On or around 04.08.2023, the accused persons herein, **JANE MUSAMBE**, was arrested by county public health enforcement

¹ Conducted the hearing.

² Closed the prosecution's case

³ Came on record after the hearing of the 2 witnesses herein

officers, PW1, **SGT EMMANUEL KEMAL**, and PW2, **NO. 20227173 CONSTABLE NAOMI CHEPKEMOI**, while at Queens village bar. The two were on inspection duties. It is their concurrent testimony that they found the accused person while without a medical certificate.

4. PW1, SGT. EMMANUEL KEMAL, stated that they found her while at the café's kitchen, washing utensils and preparing food for customers. That the business was ongoing at the time. PW2, NO. 20227173 CONTABLE NAOMI CHEPKEMOI, on the other hand, however, stated that they found the accused person while at the bar counter and with no customers.

ISSUES, BURDEN AND STANDARD OF PROOF

5. At this stage the court is required to make a finding whether a prima facie case has been established or not. The main issue at this stage is therefore, whether the prosecution, in discharging its burden of proof, has established a *prima facie* case sufficient to require me to call upon the accused herein to make her defence as required by section 211 of the Criminal Procedure Code.

6. The case of **REPUBLIC VRS KENNEDY OTIENO & 6 OTHERS (1998) eKLR**, gave a simpler explanation of what constitutes a *prima facie* case. The High Court held that it is a case where there is sufficient evidence upon which the court would convict the accused if no explanation is given.
7. The whole issue of whether a prima facie case has been made or not is a legal, rather, than a factual one. The accused person herein has been charged under the provisions of section 41(2) of the Nakuru County Public Health and Sanitation Act of 2017 which provides thus: '**(2) Any person handling food or engaging in preparing of the food without valid medical certificate shall be guilty of an offence and liable for a punishment in accordance with this Act**'
8. Has the prosecution therefore proved to the required standard of beyond reasonable doubt that the accused person herein was found while handling food or engaging in preparing of food? It is only then that she shall be required to have a medical certificate as per the above provisions.

DETERMINATION

9. From the outset, the charge herein appears to be at variance with its particulars. The accused person has been charged with operating a bar and restaurant, yet the provisions herein are clear that a medical certificate is required for a person who is handling or engaged in preparing food. There is no evidence that the accused person herein was handling or engaged in preparation of food.
10. The prosecution's evidence on the same is contradictory. Whereas PW1 stated that the accused was found in the kitchen, PW2 stated that they found her while at the bar counter; thus, it is not clear whether the accused was found handling or engaging in the preparation of food.
11. I thus find this evidence doubtful herein as I have no reason to believe PW1's version, while disregarding PW2's, yet it is alleged that they were together when they found the accused person without the medical certificate. I find this contradiction sufficient for me to find that the prosecution's case is doubtful.
12. The accused herein should not therefore be called upon to make her defence on account of the doubtful and or confused

evidence adduced against her by the prosecution who, as aforesaid, throughout herein bore the burden of proof. She is entitled to remain silent because the prosecution's case appears unproved. This is therefore a case that should not proceed beyond the prosecution's inconsistent evidence. The prosecution has thus been unable to prove its case to the required standard of beyond reasonable doubt at this stage. The High Court in **REPUBLIC VRS KENNEDY OTIENO & 6 OTHERS, supra**, addressed the point as follows: -

It must be remembered that at the close of prosecution case, an accused has a right to keep silent in his defence. An accused person is brought to court by the prosecution. It is upon the prosecution to prove a case against an accused person beyond reasonable doubt. An accused person is under no obligation to prove his innocence. The burden of proving his guilt lies on the prosecution.

13. Guided by the above decision, I do hereby find that no *prima facie* case has been disclosed to warrant the accused herein to be called upon to make her defence herein. The upshot is that I do hereby enter a finding of not guilty against the accused person herein.

FINAL DISPOSAL ORDERS

14. I do therefore find no *prima facie* case disclosed herein and pursuant to the provisions of section 210 of the Criminal Procedure Code, I do hereby dismiss the charge against the accused person herein and consequently do hereby acquit the accused person of the offence of Handling Food in a Food Plant without Valid Medical Certificate contrary to section 41(2) as read with section 67(1) of the Nakuru County Public Health and Sanitation Act of 2017. Her cash bail is also hereby released to the depositor.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN

COURT THIS __18th__ DAY OF __November__, 2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Court interpreter: Wakesho

Prosecutor: Macharia

Defence Counsel: n/a

Accused: Present

County Officers: n/a