



**Republic v Shivachi & another (Criminal Case 8 of 2019)
[2025] KEHC 17662 (KLR) (1 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17662 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 8 OF 2019
AC BETT, J
DECEMBER 1, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

PATRICK LUANDAH SHIVACHI 1ST ACCUSED

DICKSON MULAMA BAHATI 2ND ACCUSED

RULING

1. The Accused persons herein were charged with murder contrary to Section 203 as read with Section 204 of the Penal Code, CAP 63, Laws of Kenya.
2. The particulars of the offence are that Patrick Luandah Shivachi and Dickson Mulama Bahati, on the 22nd day of December 2018 and 23rd December 2018 at Shipalo village, Lukose Sub-location, Khayega location in Kakamega East Sub-County within Kakamega county, jointly murdered Erick Manyonyi Shamwama.
3. The Accused persons pleaded not guilty to the charge of murder. Unfortunately, the 1st Accused, Patrick Luandah Shivachi, died in the course of the trial, and the case against him was terminated.
4. In support of their case, the prosecution summoned six (6) witnesses and closed its case on 15th July 2025. A summary of the evidence is that the deceased was a victim of a love triangle over one Josephine. Josephine did not give any evidence. PW5, who discovered the body of the deceased, claimed that there was a fight in Josephine’s house, but that she never saw who killed the deceased, as she did not witness the fight. PW1 and PW2 were the Assistant Chief and village elder to whom the report of the death was made. PW3 was the Pathologist who confirmed the cause of death, and PW4 was the Government Analyst who conducted the DNA tests. Clearly, the prosecution’s case hinged on forensics.



5. What this court is set to determine is whether the prosecution has established a prima facie case to put the Accused on his defence.
6. A prima facie case is established when the evidence adduced by the prosecution would be sufficient to sustain a conviction were the Accused person to remain silent and offer no defence. This means that such evidence would suffice to prove every ingredient of the offence, even without an explanation in defence. In the case of *R. T. Bhatt v Republic* [1957] EA 332 cited in *Republic v Paul Lang'at* [2022] KEHC 1049 (KLR), the Court of Appeal held 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 on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near to 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 true as Wilson J said that the Court is not required at this stage to decide finally whether the evidence is worthy of credit or whether if believed it is weighty enough to prove the case conclusively. That determination can only properly be made when the case for the defence has been heard. 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.”
7. The post-mortem report indicates that the deceased had several cut wounds on his body, which the doctor attributed to force trauma following an assault.
8. What is perturbing in this case is that although the DCI collected several clothing items from the two suspects who were later charged for the murder, there was no inventory produced before the court to link either of the suspects with any particular clothes specifically. The Investigating Officer took the investigation so casually that even in his statement that was produced in court, he stated as follows:-

“...I told the two suspects to call their relations to bring other clothes so that I can look at their stained clothes. That their T-shirt and trousers which they did, during the postmortem, the doctor removed a cartilage from the deceased body and both the suspects T-shirts trousers and the cartilage from the deceased body was escorted to government chemist Kisumu for DNA comparison...”
9. Notably, no inventory was filed to confirm which of the four items of clothing belonged to which of the suspects or to the deceased. It is impossible to know whose clothes were stained with the deceased's blood unless an inventory was prepared at the point the clothes were collected from the suspects. I note that PW 6, PC Dennis Kibet, who testified on behalf of the Investigating Officer, stated that the DNA report indicated that the DNA profile generated from the T-shirt marked A4 belonging to the Accused matches the DNA sample generated from the deceased. However, this is merely because the Exhibit Memo dated 10th January 2019 refers only to Dickson Mulama Bahati, the Accused herein. There is no explanation as to why the Exhibit Memo does not contain the name of Patrick Luandah Shivachi, yet, the investigating office indicated that he took the clothes from the two suspects. Without an inventory, the chain of custody is broken.
10. In the absence of an eyewitness, there is a considerable gap in the prosecution's case. The prosecution was only able to prove that the deceased person died and that his death was caused by an unlawful act. As to who committed the unlawful act, the prosecution relied solely on circumstantial evidence,



to wit, a DNA report. This court has already considered the DNA report and concluded that it was not conclusive due to the inherent gaps in the manner in which the two accused person's clothes were collected and forwarded for DNA testing. It is not for this court to fill this gap by calling upon the Accused to tender an explanation as to the presence of the deceased's blood on clothes that may not be his anyway. Had the Investigating Officer been more diligent, perhaps he would have adduced sufficient evidence to call for the Accused's explanation.

11. In the end, the court holds that there is insufficient evidence to place the Accused person on his defence. I therefore find that the Accused has no case to answer. He is acquitted under Section 306(1) of the Criminal Procedure Code. He is at liberty to go unless otherwise lawfully held.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA, THIS 1ST DAY OF DECEMBER 2025.

A. C. BETT

JUDGE

In the presence of:

Ms. Chala for the Prosecution

No appearance for Mr. Otsyeno for the Accused

Court Assistant: Polycap

