



**Director of Public Prosecutions v Monari & another (Criminal Case E005 of 2023) [2026] KEHC 786 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 786 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CRIMINAL CASE E005 OF 2023  
TW CHERERE, J  
JANUARY 29, 2026**

**BETWEEN**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... PROSECUTION**

**AND**

**HESBON CHWEYA MONARI ..... 1<sup>ST</sup> ACCUSED**

**TERESA KERUBO MWEBI ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. This ruling determines whether the prosecution has established a prima facie case against the Accused persons sufficient to warrant placing them on their defence. Both Accused persons are charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code chapter 63 Laws of Kenya.
2. The particulars allege that on 27<sup>th</sup> February 2023 at Nyambaria Sub-location within Nyamira County, they jointly murdered T.G, a child aged approximately one year and one month. Both Accused persons pleaded not guilty on 08<sup>th</sup> March 2023.
3. The applicable test is settled. In Republic v Abdi Ibrahim Owl [2013] eKLR, a prima facie case was described as one establishing a rebuttable presumption of guilt. The authoritative formulation remains that in Ramanlal Trambaklal Bhatt v R [1957] EA 332, where the Court held that a prima facie case is not one that might possibly succeed, but one on which a reasonable tribunal, properly directing itself on the law and the evidence, could convict if the accused persons elected to remain silent.
4. The prosecution called three witnesses. PW1 Edna Nyangate Mwebi testified that she is the grandmother of the deceased and the mother of the 2<sup>nd</sup> accused. She stated that on 27<sup>th</sup> February 2023 at about 5.00 p.m., she was at her home with the baby, who was breastfeeding. She testified that the baby later left her home and did not return. At about 11.00 p.m. the same night, PW1 received a phone



call from an unidentified person informing her that the baby had died. PW1 further testified that she was later informed by a doctor that the baby died due to a head injury, namely a fractured skull.

5. PW2 Susan Moraa Bosire, a village elder, testified that on 28th February 2023 at about 7.00 a.m., she received information that a baby had been strangled at the home of the 1st accused. She went to the said home and found the 1st accused present under guard. She did not see the body, which had already been taken to the mortuary.
6. PW3 Philister Kwamboka Nyachoti, the Assistant Chief of Nyambaria Sub-location, testified that on 28th February 2023 at about 7.00 a.m., she received information that the accused persons had killed a baby. She went to the scene and later to the mortuary, where she saw the body of the deceased. She observed scars on the face and scratches on the stomach.

### **Analysis**

6. For a conviction of murder, the prosecution must prove beyond reasonable doubt, the death of a human being; that the death was caused by an unlawful act or omission; and that the unlawful act or omission was accompanied by malice aforethought.
6. Proof of death and its cause is a foundational requirement in any homicide prosecution and is ordinarily established through a post-mortem examination report and medical evidence. In the present case, no post-mortem report was produced and no medical practitioner testified.
6. Nevertheless, the fact of death may be inferred from the totality of the evidence. PW1 testified that she was informed that the baby had died, PW2 stated that the body had already been taken to the mortuary, and PW3 testified that she saw the body of the deceased at the mortuary. The Court is therefore satisfied that the child is deceased.
6. However, the only reference to the cause of death appears in PW1's testimony that "the doctor told us that the baby died due to head injury secondary to fractured skull." PW1 had no personal knowledge of the alleged medical findings, and her evidence on this point amounts to hearsay. It is therefore inadmissible and incapable of proving the cause of death.
6. In the absence of medical evidence, the Court is left without any factual or scientific basis upon which to determine whether the death resulted from unlawful acts attributable to either of the Accused persons, whether jointly or severally, and whether such acts, if any, were committed with malice aforethought.
6. Consequently, although the fact of death may be inferred from the evidence on record, the prosecution failed to establish the cause of death and its unlawfulness—both of which are indispensable elements of the offence of murder. As stated in *Ramanlal Trambaklal Bhatt v R* (supra), a prima facie case cannot be founded on conjecture, suspicion, or inadmissible evidence, and the burden of proof rests throughout on the prosecution.
6. In the circumstances, the prosecution has failed to establish a prima facie case against either Accused person. Accordingly, pursuant to section 306(1) of the Criminal Procedure Code, both Accused persons are hereby found not guilty and are acquitted. They shall be released forthwith unless otherwise lawfully held.

**DELIVERED AT NYAMIRA THIS 29<sup>TH</sup> DAY OF JANUARY \_\_ 2026**

**WAMAE.T. W. CHERERE**

**JUDGE**



Appearances

Court Assistant - Terer

Accused 1 - Present

Accused 2 - Present

For DPP - Mr. Chirchir (SADPP)

