

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. E016 OF 2023

REPUBLIC.....PROSECUTION

VERSUS

AGNES KWAMBOKA MORANGA.....ACCUSED

RULING

Introduction

1. The accused persons herein, **Agnes Moraa Moranga (1st Accused)**, **Erick Moranga (2nd Accused)**, **Casmir Ombati (3rd Accused)** and **John Makori Moranga alias Micky (4th Accused)**, are jointly charged with the offence of **murder contrary to section 203 as read with section 204 of the Penal Code**, the particulars being that on **20th March 2023 at Kenyerere area, Sameta Sub-County, Kisii County**, they jointly murdered **Christopher Nyaanga Ayora**.
2. The prosecution closed its case on **21st July 2025** after calling **seven (7) witnesses**. The court is now called upon, pursuant to **section 306 (1) of the Criminal Procedure Code**, to determine whether the evidence on record discloses a **prima facie case** sufficient to require the accused persons to be placed on their defence.
3. The principles governing a finding of a case to answer are well settled.

In the case of **Ramanlal Trambaklal Bhatt v Republic [1957] EA 332**, the Court of Appeal stated:

“A prima facie case is one which, if no explanation is offered by the defence, would justify a conviction.”

4. In the case of **Republic v Mwanzia Mutangili [2017] eKLR**, where the court emphasized that: The evidence must go beyond mere suspicion, her court is not required at this stage to decide whether the evidence is

credible or reliable and the court must determine whether, **if the accused chose to remain silent**, a reasonable tribunal could convict.

Similarly, in **Republic v Abdi Ibrahim Owl [2013] eKLR**, the court held that:

“The prosecution must adduce evidence linking each accused person to the offence charged. Mere suspicion or association is insufficient.”

5. I have carefully evaluated the entire evidence adduced by prosecution and the submissions. This is a criminal case and the standard of proof is that of beyond reasonable doubt. This is a criminal case and the standard of proof is that of beyond any reasonable doubt. The burden of proof is on prosecution as it is trite law under Section 107 of the Law of Evidence Act that he who alleges must prove. In the case of *Viscount Sankey L.C* in the case of *H.L. (E)* WOOLMINGTON V DPP [1935] A.C 462 pp 481* in a subtle and masterly fashion stated the law on legal burden of proof in criminal matters, that;

“Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception...No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.”

According to *Halsbury’s Laws of England, 4th Edition, Volume 17, paras 13 and 14:*

The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party’s case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose.

The legal burden of proof normally rests upon the party desiring the court to take action; thus, a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have

been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case of with separate issues.

6. The ingredients of the offence of murder contrary to Section 203 of the penal code as a follows:

- a. The deceased must have died.
- b. The death must have been unlawful.
- c. The perpetrator must be placed at the scene
- d. There must be malice afterthought

Analysis and Determination

7. A prima facie case must thus be established based on the aforesaid ingredients.

(a) whether deceased died

The death of **Christopher Nyaanga Ayora** is not in dispute.

PW2 (Peter Makori Monda) discovered the deceased's body in his kitchen, lying in a pool of blood with visible deep cut wounds. **PW5 (Dr Brian Mike Ochieng Ayara)** conducted the post-mortem and confirmed that the deceased sustained **multiple deep cut wounds**, including a fractured skull with brain tissue protrusion. The cause of death was found to be **head injury due to penetrative force trauma**. It is clear the death of deceased was established.

(b) whether the death was unlawful

The evidence of PW5 established that the death was unlawful

(b) Evidence on How the Deceased Met His Death

The prosecution relied on both **circumstantial evidence** and **alleged eyewitness testimony**.

PW3 (Judith Mbone) who is the alleged star prosecution witness testified that while working with the deceased in his shamba on the material day she heard him scream and saw **masked persons** chasing him. She expressly stated that she **could not identify** the assailants as they were masked. She did not name or identify any of the accused persons.

PW4 (John Nyaanga Okioga), the deceased's son, relied on a **telephone conversation** with the deceased, before his death in which the deceased allegedly mentioned that **his aunt Agnes Moraa and her son Erick** were near where he was weeding and later that **people led by Casmir Ombati were approaching**. PW4 was **not at the scene** and the name **Casmir Ombati does not appear in his recorded statement** as confirmed by him during cross-examination. No call logs of Pw4 and deceased were produced. **PW6 (Scenes of Crime Officer)** only documented the state of the scene and injuries. He did not link any accused to the offence.

(c) Investigations and Alleged Link to Accused Persons

I have carefully considered the testimony of **PW7 (Corporal Noh Tanui)**, the investigating officer and that of PW1, Pw2 and Pw4. While PW7 stated that there was a **long-standing land dispute** between the deceased and the accused persons, and that he obtained **call data records** allegedly placing the accused at the scene, PW3 allegedly told him she saw the accused persons attack the deceased. I note the following gaps;

- i. Call data records were never produced as exhibits.
- ii. The investigating officer **admitted he did not record in his statement** that PW3 saw the accused attack the deceased.
- iii. PW3 herself categorically denied identifying the attackers.
- iv. No murder weapon was recovered.

- v. No forensic or DNA evidence links any accused to the fatal injuries.
- vi. Assertions that previous cases at Ogembo law courts are **legally untenable**, as prior disputes per se does not constitute proof of commission of the offence.

8. In the upshot I proceeded to make the following findings:

Though the death and cause of death of the deceased have been established. There is no direct evidence identifying any of the accused persons as the assailants. The circumstantial evidence presented **does not meet the legal threshold** set out in As was held in **Republic v Kipkering Arap Koske & Another (1949) 16 EACA 135:**

which requires that: The circumstances be incompatible with innocence; and they must irresistibly point to the accused and no one else. Also, in the case of MUCHENE –vs- REPUBLIC [2002] 1 KLR 367, Chunga CJ, Tunoi & Owuor JJA, held –

“1. It is trite law that where a conviction is exclusively based on circumstantial evidence such conviction can only be properly upheld if the court is satisfied that the inculpatory facts are not only inconsistent with the innocence of the appellant but also that there exists no co-existing circumstances which would weaken or destroy such inference.

2. It is settled law that the burden of proving facts which justify the drawing of such inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on prosecution and always remains as such.”

9. The alleged motive of a land dispute, **without presence at the scene**, cannot sustain a charge of murder. The prosecution evidence **raises suspicion**, but suspicion alone, however strong, **cannot found a conviction**. As was held in **Sawe v Republic [2003] KLR 364 where it was held that:**

“Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence.

I find that none of the accused was placed at the scene.

On the issue of malice after thought, the same does not arise as accused have not been placed at the scene as held herein above.

Conclusion

In light of the foregoing, the court finds that the prosecution has **failed to establish a prima facie case** against any of the accused persons within the meaning of **section 306(1) of the Criminal Procedure Code**. If accused persons are placed on their defences and opt to remain silent no reasonable tribunal directing its mind to the law and facts herein can convict them. I find that the accused persons, namely Agnes Moraa Moranga, Erick Moranga, Casmir Ombati and John Makori Moranga alias Micky have no case to answer. I proceed to acquit each of them under Section 306(1) of the Criminal Procedure Code.

The accused persons are set at liberty forthwith unless otherwise lawfully held. Security be released to depositors.

**T. A. ODERA
JUDGE**

2.2.26

Delivered Virtually Via Teams Platform on this 29th day of January 2026 in the Presence of

Accused Mr. Bigogo for the 1st & 4th Accused.

Mr. Magara for the 2nd and 3rd Accused.

Mr. Koima for the State

Court Assistant Mr. Kipchircir

