



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mbehero (Criminal Case 67 of 2019)
[2026] KEHC 1291 (KLR) (10 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1291 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 67 OF 2019
AC BETT, J
FEBRUARY 10, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

ALFRED BUTICHI MBEHERO ACCUSED

RULING

1. The Accused is charged with murder contrary to Section 203 as read with Section 204 of the Penal code. The particulars being that on the 14th day of October 2019 at Iyenyi village, Shivagala Sub-location, Shirumba Location of Kakamega South Sub-County within Kakamega County he murdered Frida Khatonde Lumiti.
2. The Prosecution called six witnesses none of whom witnessed the incident as the victim who used to live alone, was found dead in her house on the morning of 15th October 2019.
3. An autopsy conducted by the Consultant Pathologist who testified as PW5 and produced a post mortem report revealed that the deceased had widespread laceration at the back of the skull, fractures on the left ribs involving the 2nd and 7th rib and on the right ribs involving the 2nd to 8th ribs, severe swelling of the brain, and simple fracture involving the neck. The Pathologist formed the opinion that the cause of death was asphyxia secondary to severe chest and facial trauma following assault.
4. The Accused was arrested on the basis of a report made by PW1, who is a daughter of the victim, that the deceased had informed her that a certain man had come into her house at night and raped her and the second time the rapist came, she peeped through the opening in her window and identified the person as Shikoti. According to PW1, the deceased had identified the rapist as the Accused. The Accused had been imprisoned but had recently been released.
5. DNA samples extracted from the deceased and her clothings did not match the Accused's DNA profile.



6. From the evidence of PW2 and PW3, the Accused did not reside in the same village as the deceased.
7. The Investigating Officer testified that after receiving a report of the murder incident, he and his colleagues went to the scene and found the body of the deceased lying on the floor face down with a deep-cut wound on the back of her head and bruises on her shoulder. They processed the scene and launched investigations whereby PW1 informed them that the deceased had confided in her that Alfred Butichi had raped her on two occasions. They arrested the said suspect on 19th October 2019 and after post mortem, took DNA samples for DNA analysis. He conceded that the post mortem report did not indicate any finding of sexual assault on the deceased.
8. It is against the above background that I am tasked to make a decision as to whether the Accused has a case to answer.
9. In order to place an Accused person in his defence, the Prosecution must establish a prima facie case. A prima facie case is established where the prosecution's evidence is sufficient on its own to sustain a guilty verdict even if the accused person opts to remain silent. In *Republic v. Abdi Ibrahim Owl* [2013] KEHC 2122 (KLR), the court defined a prima facie case as follows:-

“Prima facie” is a Latin word defined by Black’s Law Dictionary, 8th Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “Prima facie case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”.”
10. In a murder trial, it would mean that all the elements of the offence would be present and sufficient to create a rebuttable presumption of guilt. The accused would then be required to explain himself so as to delink himself from the offence or rebut the prosecution's evidence. In *Ronald Nyaga Kiura v. Republic* [2018] KEHC 5030 (KLR), the Court held that:-

“It is important to note that at the close of prosecution, what is required in law at stage is for the trial court to satisfy itself that a prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the Criminal Procedure Code. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebutted is offered by an accused person. This is well illustrated in the cited Court of Appeal case of *Ramanlal Bhat -vs- Republic* [1957] EA 332. At that stage of the proceedings the trial court does not concerned itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence.”
11. In this case, there is no single piece of evidence, either direct or circumstantial connecting the incident that led to the death of the deceased, to the Accused. What is there is suspicion, based on an unsubstantiated allegation by the deceased to her daughter, that she saw the Accused one night when she was raped. Consequently, the prosecution's case, on its own, cannot stand, and it is not incumbent on the Accused to fortify it.
12. In the locus classicus case of *Ramanlal Trambaklal Bhatt v. Republic* [1957] EA 332 at 334 to 335, the court rendered itself thus:-

“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 is made but if, at the close of the prosecution, the case is merely possibly be thought sufficient to sustain a conviction.” This



is perilously near 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 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.”

13. Based on the proceedings, there is no doubt in my mind that the evidence adduced by the prosecution is not such that a reasonable tribunal, properly directing its mind, would convict the Accused were he to keep quiet and offer no defence.
14. The upshot is that I find that the prosecution has not established a prima facie case.
15. The Accused is therefore acquitted and is hereby set free unless otherwise lawfully held.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA, THIS 10TH DAY OF FEBRUARY 2026.

A. C. BETT

JUDGE

In the presence of:

Ms. Chala for the State/Prosecution

Mr. Idi for the Accused person

Court Assistant: Polycap

