



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYANDARUA**

**CRIMINAL CASE NO. 56 OF 2023**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**MORRIS MUTHUI MUTETI..... 1<sup>ST</sup> ACCUSED**

**LUKA KIRAGU ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. Morris Muthui Muteti and Luka Kiragu are charged with murder contrary to section 203, as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 16<sup>th</sup> day of June 2021, at Kamakwa shopping centre, in North Kinangop Sub-County within Nyandarua County, they murdered Daniel Muthee Emojo.
3. We have limited evidence from Cyrus Kahura (PW1). He testified that as he was heading home, an unidentified person ran behind a butchery. Soon after, he heard this person calling for help. He learned from Wachira and Joseph that the person's name was Daniel, but he did not know which Daniel it was. This was the only witness the prosecution called before closing its case.
4. The accused were brought to court on December 3, 2021. Their plea was recorded on December 15, 2021. On September 21, 2022, the court was informed that investigations had been completed and that the prosecution planned to call 15 witnesses.
5. The case was scheduled for multiple hearings but did not commence for various reasons until October 9, 2025, when only one witness was called. An adjournment was granted despite

lacking merit, and it was noted as the final adjournment. On December 2, 2025, the case could not proceed because the prosecution counsel was in training.

6. On January 14, 2026, during the subsequent hearing, the prosecution counsel closed their case, noting they had no witnesses present. However, they did not provide any explanation for their absence.
7. After reviewing the available evidence, the key issue is whether the prosecution has met its initial burden of proving a prima facie case against the accused. **Black’s Law Dictionary, 10th Edition**, defines a prima facie case as follows:

*Prima facie case. (1805) I. The establishment of a legally required rebuttable presumption. 2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favour.*

8. The Court of Appeal in the case of **Ramanlal Trambaklall Bhatt vs R [1957] E. A 332 at 334 and 335** defined a *prima facie* case as follows:

*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.*

9. Article 50 (2) (i) of the Constitution of Kenya provides:

*(2) Every accused person has the right to a fair trial, which includes the right—  
(i) to remain silent, and not to testify during the proceedings;*

10. In this case, if each accused exercises their constitutional rights as mentioned earlier, I cannot find them guilty based on the available evidence. Therefore, the prosecution has not established a prima facie case against any of them. Consequently, I acquit each of the murder charge under section 306(1) of the Criminal Procedure Code. The accused are released unless lawfully detained.

**Delivered and signed at Nyandarua, this 3<sup>rd</sup> day of March 2026**

**KIARIE WAWERU KIARIE  
JUDGE**