



CRIMINAL CASE NO  
E015 of 2025 RULING

**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**HOMICIDE SECTION**

**CRIMINAL CASE NO E004 OF 2025**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**BONAYA ELEMA BUKUNO .....**

**ACCUSED**

**RULING**

1. The accused was charged with the offence of murder contrary to section 203 as read with section 204 of the penal code to which he pleaded not guilty.
2. To prove its case against the accused , the state called and examined a total of eight witnesses and at the close of the prosecution case, it was submitted by the state that the cause of death of the deceased was confirmed through the post mortem report to be not from a natural cause but from both external and internal injuries caused by an assault on his spine , neck and forehead. It was submitted that the accused was identified as the one who cause the death through all the witnesses as corroborated by the CCTV footage that pointed to the accused as the one who lifted the deceased and both fell on the ground.
3. It was submitted that the accused was well known to the witnesses as a sales person at the same company where the deceased and PW5 worked. It was submitted that the

identification of the accused was that of recognition and therefore reliable in support of the submissions reference was made to the case of *Anjononi & others v republic* [1980] KLR 59.

4. It was submitted that malice aforethought was established as it is the accused who lifted the deceased up in a fit of anger and continued to role the same on the ground several times until the deceased became helpless and that there was no evidence of provocation on the part of the deceased and that the accused was not under any attack from the deceased as the accused continued to utter insulting words against the deceased including swearing to finish the same. The force employed by the accused was excessive and brutal , which was proof that he meant to kill the same by all means.
5. It was concluded that whereas the accused was entitled to admonish the deceased as his supervisor fir failing to open the door, the force used was excessive and inexcusable.
6. On behalf of the accused it was submitted that the prosecution failed to establish a prima facie case against the accused person in that it failed to establish malice aforethought noting that the same was acting under provocation as was stated in the case of ***Republic v Ndegwa Juma Iddi [2014] eKLR*** where the court held that contradictory evidence in respect of motive could not be a basis of a prima facie case.
7. It was submitted that provocation was recognized under section 2007 of the Penal Code as a partial defence to

murder and that it negates the element of malice aforethought taking into account the circumstances of the case as was stated in the case of **Republic versus Leshan Lemomo [2021] eKLR**

### **DETERMINATION**

At this stage of the proceeding what the court is called upon to establish whether the prosecution has made up a case to enable the court to call upon the accused to offer some explanation put different whether the court is prepared to convict the accused should he opt to excessive his constitutional right to remain silent as was stated in the celebrated case of **Ramanlal T Bhatt versus Republic [1957] EA 332** and as applied by the superior courts. **Justice JB Ojwang** as in then was in the case of **Republic versus KARANJA KIRIA CR.CASE NO.13 OF 2004 NAIROBI [2009] eKLR** had this to say on prima facie case:-  
“The question at this stage is not whether or not the accused is guilty as charged but whether there is such cogent evidence of his connection with the circumstances in which the killing of the deceased occurred, that the concept of prima facie case dictates as a matter of law that an opportunity be created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled . . . The Court of Appeal Criminal Appeal No. 77 of 2006, the Court of Appeal expressed that too detailed analysis of evidence, at no case to answer stage is undesirable if the court is going to put the accused onto his defence as too much details in the trial court’s ruling could

then compromise the evidentiary quality of the defence to be mounted.”

8. Advises against making a lengthy analysis of the evidence should the court be minded on putting the accused on his defence.

9. In this case both the accused and the deceased were placed together and therefore the issue of the provocation or otherwise is open to the accused as defence. Without saying much on the evidence on record I find and hold that the prosecution has proved a prima facie case to enable the court to put the accused on his defence so as to offer any explanation if he so wishes through the advice of his legal counsel and it is so ordered.

**DATED SIGNED AND DELIVERED AT MAKADARA THIS 10<sup>th</sup>  
DAY OF MARCH 2026**

**J. WAKIAGA  
JUDGE**

**In the presence of: -**

Court assistant - Gitonga

Counsel for the state - Mr. Ochieng

Accused in person - Present