



**Republic v Mwanzi & 2 others (Criminal Case E007 of 2024)  
[2026] KEHC 2931 (KLR) (6 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 2931 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL CASE E007 OF 2024  
AN ONGERI, J  
MARCH 6, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SAMUEL KEYA MWANZI ..... 1<sup>ST</sup> ACCUSED**

**ALFRED MUTUA PONDO ..... 2<sup>ND</sup> ACCUSED**

**HARRY TONY PACHANGA ..... 3<sup>RD</sup> ACCUSED**

**RULING**

1. The three Accused persons were charged with Murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the charge were that on 5th May 2024 at around 0500 hours at Bosnia "A" village in Challa Location in Taveta sub-county within Taita Taveta county, the Accused persons jointly murdered Vincent Mkindi Kala.
3. The prosecution is relying on the testimony of PW1 Rose Wafula Nafula on identification of the three Accused Persons.
4. PW1 said she was hiding at a nearby bush when she saw the three Accused Persons attack the deceased.
5. She said there was light from a nearby solar light and she was able to see the three Accused Persons.
6. However, PW6 Holiness Saru who discovered the body said the place the body was lying was dark and she used a torch to identify the body.
7. PW1 also said a hat belonging to Accused 1 was recovered from the deceased.



8. However, the said hat was not produced in court as an exhibit and neither is there evidence that it belonged to the first Accused Person.
9. The defence Counsel submitted on behalf of the accused persons as follows;
  - i. that the prosecution has failed to establish a prima facie case sufficient to place them on their defence under Section 306(2) of the Criminal Procedure Code.
  - ii. The principles governing a finding of no case to answer are well settled in the case of *Bhatt v Republic*, where the court held that a prima facie case is not one based on mere suspicion but on evidence that would persuade a reasonable tribunal, properly directing itself, to convict if no explanation is offered by the defence.
  - iii. This position was affirmed in *Sawe v Republic*, where the Court of Appeal emphasized that suspicion alone, no matter how strong, cannot form the basis of a conviction.
  - iv. The prosecution must therefore prove each element of the offence of murder under Section 203 of the Penal Code: the death of the deceased, the cause of that death, that the death was unlawful, that the accused persons caused the death, and that they acted with malice aforethought as defined in Section 206.
  - v. Failure to prove any one of these elements is fatal to the prosecution's case.
  - vi. The prosecution's case rests heavily on the alleged visual identification of the accused persons at night, which is inherently unreliable and must be approached with the greatest caution.
  - vii. In *Wamunga v Republic*, the Court of Appeal warned that visual identification evidence can lead to miscarriage of justice and must be carefully examined.
  - viii. Similarly, in *Maitanyi v Republic*, the court emphasised the need to inquire into the intensity and source of light, the distance between the witness and the accused, the duration of observation, and whether the witness had previous knowledge of the accused.
  - ix. In the present case, the alleged identification by PW1 occurred at around 5:00 a.m. in conditions she described as dark, with light emanating from a solar-powered source.
  - x. However, the prosecution did not call the owner of that solar source to confirm whether it was actually on at the time of the incident.
  - xi. The witness also admitted that the assailants were more than thirty metres away from where she was hiding behind a bushy fence, which significantly obstructed her view.
  - xii. She further stated that she hid upon seeing the assailants arguing, meaning her observation was made under conditions of fear and panic. These circumstances render her purported identification highly suspect.
  - xiii. The unreliability of the alleged lighting conditions is further underscored by the testimony of PW6, who arrived at the scene at approximately 5:30 a.m. She testified that she had to use the torch on her phone to identify the body of the deceased, despite being familiar with him as her neighbour.
  - xiv. This clearly demonstrates that it was still very dark at the time, contradicting PW1's claim that there was sufficient light from a solar television to enable positive identification of persons from a distance of over thirty metres.



- xv. The Court of Appeal in *Anjononi v Republic* held that even where recognition is alleged, mistakes can still occur, particularly in difficult conditions.
- xvi. In *R v Turnbull*, the court warned that even a convincing witness can be mistaken, and several witnesses can all be mistaken. Where the stakes are as high as in a murder trial, such risks cannot be ignored.
- xvii. The prosecution's case is also riddled with material contradictions and gaps that further weaken its credibility.
- xviii. PW2 testified that the deceased was heard preaching outside their home between 8:00 p.m. and 10:00 p.m., and again at 2:00 a.m. PW3, however, stated that he saw the deceased at a bar at 11:00 p.m. in the company of PW1 and the second accused.
- xix. PW5, on the other hand, claimed to have heard the deceased preaching at 11:00 p.m., the very same time PW3 placed him at the bar.
- xx. A person cannot be in two different places at the same time, and these irreconcilable accounts point to serious inconsistencies in the prosecution's narrative.
- xxi. PW1 herself contradicted these accounts by stating that she was not with the deceased or any of the accused on the material night, and that she only left her house at around 4:00 a.m. to visit her boyfriend. She expressly dismissed PW2's testimony as false.
- xxii. The credibility of the prosecution witnesses, particularly PW1, is highly questionable. The courts have held that a witness upon whose evidence the court is asked to rely should not create an impression of being untruthful or of doubtful integrity.
- xxiii. PW1's moral conduct, as revealed in the evidence, demonstrates a willingness to lie. It emerged from the testimony of PW3 that PW1 was married to a man named Mogaka, yet she was also in a relationship with the deceased.
- xxiv. PW1 herself admitted to having a boyfriend outside her marriage. Her ability to deceive her own husband for years over extra-marital affairs raises serious doubts about her truthfulness before this court.
- xxv. A witness who can comfortably lie to a spouse of over ten years cannot be relied upon to tell the truth in judicial proceedings.
- xxvi. The prosecution also failed to call crucial independent witnesses whose evidence would have clarified material issues.
- xxvii. The husband of PW1 and her boyfriend were not called to corroborate her movements on the night of the incident.
- xxviii. No witnesses from the bar where the deceased was allegedly last seen were called to confirm whether PW1 and the second accused were actually present.
- xxix. In *Bukenya v Uganda*, the court held that where the prosecution fails to call essential witnesses, the court may infer that their evidence would have been adverse to the prosecution's case.
- xxx. Additionally, physical evidence such as a cap found at the scene was never produced in court or subjected to forensic examination to connect it to any of the accused persons.



- xxxi. A lesa, typically used by women, was also found at the scene, yet the investigating officer made no effort to establish its ownership or link it to PW1, who was undoubtedly present at or near the scene given her detailed account of events.
  - xxxii. The investigating officer's conduct further exposes the weakness of the prosecution's case. He admitted in cross-examination that he did not conduct any meaningful investigations beyond recording statements from witnesses.
  - xxxiii. He confirmed that the accused persons were arrested on 4th May 2024, yet the offence occurred on 5th May 2024.
  - xxxiv. This means the accused were already in custody when the alleged murder took place, a fact that completely exonerates them and demonstrates that they have been charged with an offence they could not possibly have committed.
  - xxxv. The officer further stated that he simply proceeded to charge the accused based on information received, without independent verification or forensic analysis.
  - xxxvi. The prosecution has therefore failed to adduce any credible evidence linking the accused persons to the murder.
  - xxxvii. The circumstantial evidence relied upon does not meet the test established in *Republic v Kipkering arap Koskei*, which requires that the inculpatory facts be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis.
  - xxxviii. The circumstances here point to an alternative hypothesis supported by the evidence: that PW1, in the company of her husband or boyfriend, may have been involved in the death of the deceased, and has used the accused persons as scapegoats.
  - xxxix. The presence of a lesa at the scene, the impossibility of positive identification in the dark, and the inconsistencies in her account all support this alternative theory.
  - xl. In conclusion, the prosecution has not established a prima facie case against any of the accused persons.
  - xli. The evidence on record is fraught with contradictions, unreliable identification, lack of corroboration, and a complete failure of investigation.
  - xlii. To call upon the accused to defend themselves on such weak and speculative evidence would be to shift the burden of proof, which the law squarely places on the prosecution.
  - xliii. The accused persons through their submissions urged the court to find that they have no case to answer and to acquit them accordingly.
10. Upon a meticulous consideration of the evidence adduced by the prosecution, the submissions made by the defence, and the relevant principles of Kenyan law, this court now renders its ruling on whether a prima facie case has been established against the three accused persons, Samuel Keya Mwanzi, Alfred Mutua Pondo, and Harry Tony Pachanga, sufficient to require them to be placed on their defence.
11. The cardinal legal test to be applied at this stage is well-settled in our jurisdiction.
12. It is not whether the prosecution has proved its case beyond a reasonable doubt, a determination reserved for the end of the full trial.



13. Rather, as was definitively established in the seminal case of *Ramanlal Trambaklal Bhatt v Republic* [1957] EA 332, a prima facie case is 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.
14. This threshold requires more than a mere scintilla of evidence or any amount of worthless, discredited testimony. The evidence must be such that it would persuade a court to convict in the absence of any rebuttal, and it is not meant to be a mechanism for the accused to fill in the gaps of a weak prosecution case .
15. In the instant case, the prosecution's entire edifice rests almost exclusively on the testimony of PW1, Rose Wafula Nafula, who claims to have seen the three accused persons attack the deceased.
16. This is fundamentally a case of identification, and a difficult one at that, as the events are alleged to have occurred at night.
17. The law on the acceptance of such evidence is stringent, as courts have long recognized the grave danger of miscarriages of justice stemming from mistaken identity in poor lighting conditions.
18. The Court of Appeal in *Wamunga v Republic* (as cited in the defence submissions) warned that evidence of visual identification in difficult circumstances must be carefully scrutinized to ensure it is watertight.
19. Similarly, evidence of identification at night must be absolutely reliable, especially where there is no corroboration.
20. The court must therefore interrogate the nature and source of light, the distance between the witness and the accused, and the opportunity for observation.
21. Applying these principles to the evidence on record reveals profound and unsettling weaknesses. PW1 stated she was hiding behind a bushy fence, over thirty metres away from the scene, at about 5:00 a.m.
22. While she claimed there was light from a nearby solar-powered source, this assertion is cast into serious doubt by the testimony of PW6, Holiness Saru.
23. PW6, who discovered the body at around 5:30 a.m., testified that the area was so dark she was compelled to use the torch on her phone to identify the deceased, who was her own neighbour.
24. This stark contradiction between the evidence of PW1 and PW6 goes to the very heart of the prosecution's case.
25. If the scene was as dark as PW6 described, the purported identification by PW1 from a distance, through a bushy fence, becomes highly improbable and unreliable.
26. The failure by the prosecution to call the owner of the alleged solar-powered source to confirm whether it was indeed on at that hour further weakens PW1's account and invites the inference that such evidence would have been adverse to their case, a principle long recognized in Kenyan jurisprudence as established in *Bukenya v Uganda* .
27. Furthermore, the credibility of PW1, the linchpin of the prosecution's case, has been severely impeached, not merely by defence submissions but by the internal contradictions within the prosecution's own witness testimonies.
28. As highlighted by the defence, the accounts of PW2, PW3, and PW5 regarding the deceased's movements on the night of his death are irreconcilable.



29. One places him preaching at home, another at a bar with PW1 and the second accused at the same time. PW1 herself dismissed PW2's testimony as false and admitted to leading a life of deception, concealing extra-marital affairs from her husband for years.
30. While a witness's moral conduct does not automatically disqualify them, a pattern of sustained deceit is a relevant factor for a court to consider when assessing their truthfulness.
31. A witness upon whose evidence a court is asked to rely should not create an impression of being untruthful or of doubtful integrity, as held in *Ndungu Kimanyi v Republic*. The presence of a leso at the scene, a garment typically associated with women, and the failure of the investigating officer to explore its link to PW1, adds to the cloud of suspicion hanging over her narrative, suggesting an alternative hypothesis that has not been investigated.
32. The prosecution's case is further weakened by its failure to produce material evidence and by the conduct of the investigation itself.
33. A hat allegedly belonging to the first accused and recovered at the scene was not produced as an exhibit, nor was there any evidence to prove ownership.
34. In the final analysis, the evidence presented by the prosecution, when taken at its highest, is not such that a reasonable tribunal could convict if no defence were offered.
35. The sole identifying witness's testimony is irreconcilably contradicted by another prosecution witness on the crucial issue of lighting.
36. The key witness's credibility is deeply suspect. Material exhibits were not produced, and crucial independent witnesses were not called. Most damningly, the investigating officer's own testimony places the accused persons in police custody at the time of the offence.
37. The prosecution has therefore failed to clear the legal hurdle set in the *Bhatt* case. This is not a case where the evidence is merely weak; it is a case where the evidence, on its own admission, points to the impossibility of the accused's guilt.
38. To proceed would be to shift the burden of proof onto the accused, which the law does not permit.
39. Consequently, I find that a prima facie case has not been established against Samuel Keya Mwanzi, Alfred Mutua Pondo, and Harry Tony Pachanga.
40. They are hereby acquitted of the charge of murder contrary to Section 203 as read with Section 204 of the Penal Code.
41. They are set at liberty forthwith unless otherwise lawfully held for any other reason.

**DATED, SIGNED AND DELIVERED THIS 6<sup>TH</sup> DAY OF MARCH, 2026 IN OPEN COURT AT VOI.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Millicent/Mabishi

State Counsel: .....

..... for the Accused Persons



The Accused Persons

