



**Republic v Towet (Criminal Case E009 of 2024)  
[2026] KEHC 2478 (KLR) (3 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2478 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE E009 OF 2024  
PN GICHOHI, J  
FEBRUARY 3, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ENOCK KIPKEMOI TOWET ..... ACCUSED**

**RULING**

1. Enock Kipkemoi Towet (hereafter referred to as Accused) is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on 18<sup>th</sup> February, 2024, at Kibara Village in Kiptororo location Kuresoi North Sub-County within Nakuru County, murdered Emmanuel Cheruiyot.
2. He pleaded not guilty to the charge denied the charge. In support of the prosecution case, the State called the Dr. Wesley Rotich (PW1) and the Investigating Officer No. 63774 CPL Anthony Muriithi (PW2) of Kerenget DCI office.
3. Dr. Wesley Rotich (PW1), testified that upon request by a Police Officer from Kuresoi Police Station, he performed the Post-Mortem on the body of the deceased herein at Kericho County Referral Hospital on 29/2/2024 after the body was identified by two witnesses.
4. The two family members and a Police Officer were present during the post-mortem. It was about a week after the death .
5. The body had:-Multiple bruises on the front part of the head.Degloving Injuries on the right hand and both knees meaning that the injuries involved peeling of the skin.
6. He opined that these injuries were caused by any blunt or sharp object depending on the force used.
7. Further, there were bruises on the chest and abdomen; Cyanosis of the finger nails which was a sign of lack of oxygen in the body and; brises on the neck.



8. Upon opening the body, he noted bleeding around the neck and inside the right side of the chest .
9. He concluded that the cause of death was lack of oxygen due to manual strangulation. He explained that the injuries on the right hand and both knees were defensive injuries going by what he noted both hands. It was his opinion that the bruises on the neck were fatal otherwise the other injuries could not have been fatal.
10. In cross examination by Mr. Matoke H. for the accused, the Doctor opined that the deceased was defending himself going by the bruises on the body. That most likely, the deceased struggled to avoid the injuries being inflicted on him. That this defence could have been to prevent strangulation as normally happens to people during strangulation.
11. He ruled out a possibility that the deceased committed suicide as one cannot strangle himself in that manner. He explained that once a person feels pain, he releases it as he gasps for air. The Doctor produced the post-mortem Report as Exhibit 1.
12. The Investigating Officer (PW2) testified that according to the facts he gathered, the deceased parted with his wife with who they had three children. He decided to take the children to their grandmother and when she enquired where the third child was, the accused responded that he did not know where the child was . That prompted her to contact her other children . A search for the missing boy commenced and the boy's body was traced in a borehole.
13. PWE told the Court that the accused person had surrendered himself at the Police Station and told the Police Officers that he had killed the boy. However, that information was not recorded in the Occurrence Book (OB) despite that the accused presented himself there.
14. It was his evidence that neither the statement nor confession by the accused person was not recorded. However, the accused was charged with this offence after the post-mortem was carried out and the police presumed that the child died on the date he went missing, not the 18<sup>th</sup> February, 2024 as per the Information (Charge ).
15. The Investigating Officer's testimony was that the accused could not account for the third child but the date of the child's death . Th at the Accused's brothers and mother were witnesses but they disappeared and could not be traced to attend court to testify while the accused's remaining children were too young to understand anything or testify.  
The Investigating Officer guessed that the accused was unable to take care of the children after his wife left him.
16. During cross examination, by the defence counsel, the investigating officer told the court that the accused had three to four children but he was not sure of that.
17. Further, that no witness saw the deceased being thrown into the borehole.. He did not know whether any witness saw the body being retrieved from the borehole . He was not sure when the deceased died but he disappeared on 18<sup>th</sup> February, 2024.
18. He explained that he did not trace the witnesses for purposes of recording their statements and therefore, he never saw them. That being relatives of the accused person, the witnesses did not want to testify and that is why they disappeared. That they had intended to settle the matter out of court but they refused to attend Court for that purpose .
19. He explained that he did not attend post-mortem and was not aware that the children were staying with their grandmother at the time the decease went missing.



20. He did not know who in particular retrieved the body of the deceased from the borehole , but it was the relatives while assisted by the villagers and the police.
21. At the close of the prosecution case, both parties chose not to make any submissions on whether the accused had a case to answer or not.

### **Determination**

22. Upon consideration of the prosecution case , this Court’s duty is to ascertain if the prosecution has established a prima facie case to warrant the accused being placed on his defence as stated in the celebrated case of Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335 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 out if, at the close of the prosecution case, the case is merely one which on fully consideration might 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.”

23. Regarding this charge, Section 306 of the Criminal Procedure Code requires the prosecution to tender prima facie evidence on the following elements:-
  - a. The death of the deceased.
  - b. Whether his death was unlawfully caused.
  - c. Whether the death was actuated by malice aforethought.
  - d. Whether the accused person before Court were positively identified and placed at the scene of the crime.
24. For emphasis, Section 306 of the Criminal Procedure Code provides as follows:-

“(1)When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence, shall after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit recording a finding of not guilty. (2)When the evidence of the witnesses for the prosecution has been concluded the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court on his own behalf or make unsworn statement and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether is intended to call any witness as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.”

25. In this case, the death of the deceased herein is factual from the evidence herein. It was not suicide. The injuries were consistent with deceased defending himself from strangulation but he was actually strangled. That means the death was unlawful.



26. The issue then is whether the accused person was the killer. There is no one who saw the accused kill the deceased.
27. What is before Court suspicion that the accused person had a hand in this death. Though the Investigating Officer told the Court the accused person presented himself at the Police Ptation, no report was booked and no statement or confession was recorded from him.
28. Before this Court remains a suspicion, guesswork and speculation by the Investigating Officer that the accused killed his own biological son. He guessed that the killed this child because he was unable to take care of him after the accused's wife deserted him and the children.
29. In totality, the evidence on record is too insufficient to warrant the accused being placed in defence. In short, no prima facie case was established against him.
30. In conclusion, the Accused person has no case to answer. He is therefore acquitted under Section 306 (1) of the Criminal Procedure Code. He is set at liberty unless otherwise lawfully held.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2026.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Ms Anyumba for the State

Mr. Matoke H for Accused

Enock Kipkemoi Towet- Accused

Erickson , Court Assistant

