



**Republic v Wekesa (Criminal Case E006 of 2023)
[2026] KEHC 3535 (KLR) (17 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3535 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
CRIMINAL CASE E006 OF 2023**

**RPV WENDOH, J
MARCH 17, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

MICHAEL WEKESA ACCUSED

RULING

1. By the information dated 1/11/2023, the accused, Michael Wekesa was charged with the offence of Murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the charge are that on 10/10/2023, at Solion Area, Muino Location in Pokot Central Sub County, within West Pokot County, Murdered Chepocheyech Chebarala Merinyang.
3. The accused denied the offence and the case proceeded to trial with the prosecution calling a total of six (6) witnesses.
4. PW1 Philip Merikira Merinyang, a son to the deceased was at their home on 10/10/2023 with the deceased, when at about 2.00p.m., the accused, Wekesa went there; that Wekesa used to claim to be a doctor. PW1 saw accused inject the deceased and put some medicine in her eyes; that the deceased started screaming asking for water but accused said she should not be given water. He went to get milk and on returning, found his mother had died. He screamed and his father who was herding cattle nearby came; that accused ran off but people followed him and later arrested him at the home of one Chemakui, took him back to the deceased's home and locked him up till police came and collected him. PW1 said that the mother was suffering from eyes and nothing else he knew of.
5. PW2 Benjamin Yarasia, also a son to the deceased responded to PW1's screams on 10/10/2023 about 2.00p.m. On reaching PW1's home he found PW1 with the mother (deceased); that the mother was lying on the ground and PW1 explained to him that Wekesa had injected the deceased. On enquiry where Wekesa was, he was informed that he had ran away. PW2 was only aware that the deceased was



- suffering from her eyes. He knew accused as person who held out himself as a doctor and used to treat people. He saw when Wekesa was brought back to the deceased's home with some medicines which he was arrested with.
6. PW3 Daniel Madasia, a son to the deceased recalled that on 10/10/2023, about 4.00p.m. while at his children's school, was informed that somebody who lived at the Chiefs home injected his mother and she had died. PW3 knew Accused as a doctor and used to see him carry medicine in a bag. He assisted take deceased's body to the mortuary and attended the post mortem. The Doctor informed them that the medicines administered to her caused the death. According to PW3, his mother was not sick but only had a sick eye.
 7. PW4 Dr. John Chirchir of Kapenguria Referral Hospital performed the post mortem on the deceased on 12/10/2023. He observed that there was blood discharge from the oral and nasal orifices of the deceased.
 8. Internally, there was darkening of the lung tissue like one who had smoked for long; the liver was enlarged; one side of the heart lacked oxygen and there was water in the membrane of the heart which was abnormal, minor haematoma to the frontal region of the scalp. He formed the opinion that the cause of death was Myocardial Infraction which means one part of the heart lacked oxygen. He took samples of the heart tissue, stomach contents, liver, small intestines, Kidney and some blood for further investigation on what caused the Myocardial infraction and to rule out poisoning. He could not determine whether there was poisoning. He said that there are many reasons for the infraction, like air in the syringe; cholesterol etc. He did not see any sign of injection on the deceased's body.
 9. PW5 Sgt. Simon Lokortodo of Tamkar Police post under Sigor police station received a call from Chief of Muino Location on 10/10/2023. He informed him that a lady had died and was suspected to have died after being injected. He proceeded to the scene with other officers, where he also found the body of the deceased and the suspect who is accused had been locked up in a house at the scene. He identified the medicines that were said to have been found with the accused. He rearrested accused and handed him over to the DCI.
 10. PW6 PC Kipyegon Cheruiyot was the Investigating Officer. He was assigned the case on 11/10/2023. He found the accused detained at the Tamkal police post and received the assorted medicines, syringe and cotton wool allegedly recovered from the accused and produced them as exhibits. He attended the post mortem. He said that he preferred the charges based on the Doctor's findings.
 11. The prosecution closed its case and the question that needs to be answered at this stage is whether the prosecution has established a 'prima facie case' against the accused to warrant him to defend himself.

What is a 'prima facie case?'

12. 'Prima facie' is a Latin word defined in the Blacks Law Dictionary 8th Edition as "sufficient to establish a fact or raise a presumption unless disproved or rebutted". The same dictionary also defines it as "establishment of a legally required rebuttable presumption, that an accused person is guilty of the offence as charged. The definition was better expounded in the case of Ramanlal Trambaklal Bhatt -V- Republic (1957) EA 332 page 334-335 where the East African Court of Appeal said "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, the case is merely one "which on full 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...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. The question is whether at the close of the prosecution case this court properly directing its mind to the law and evidence, can convict if the accused offers no explanation in his defence.
14. The offence of Murder is defined in Section 203 of the Penal Code as “Any person who with malice aforethought causes death of another by an unlawful act or omission is guilty of Murder”

The three ingredients that the Prosecution need to establish beyond reasonable doubt in a case of murder are: -

1. Proof of death;
2. Proof that the accused caused the unlawful act or omission that led to the death;
3. Malice aforethought.

Proof of death.

15. PW1,2, and 3, all sons of the deceased, confirmed that their mother died on 10/10/2023. PW3 was present during the post mortem conducted by Dr. Chirchir (PW4) on 12/10/2021. The Investigation officer (PW6) also attended the post mortem. No doubt the deceased died.

Whether accused caused the death:

16. PW1 was with the deceased when the accused came to their home to attend to the deceased. According to PW1, PW2 and 3, the deceased had an eye problem. They knew accused who held out himself as a doctor in the area and used to treat people. According to PW1, the accused injected the deceased and put some medicine in deceased’s eyes after which she started to scream asking for water and died.
17. The Doctor (PW 4) who performed the post mortem formed the opinion that the deceased died of Myocardial Infraction meaning lack of Oxygen in the right side of the heart. His view is that that infraction can be caused by several other factors like Cholesterol or air in the syringe. That is why PW4 took out specimens from the deceased’s body including the heart, so that further investigations could be done to rule out poisoning. The Doctor did not make any conclusions as to what caused the infraction. The assorted medicines found with accused were supposed to have been submitted to the Government Analyst together with the specimens taken from the deceased to determine cause of the infraction or to rule out poisoning. The Investigating Officer (PW6) did not do anything after the post mortem. According to him, the Doctor found that the deceased had died of poisoning but there was no such finding. There is therefore no evidence to prove that whatever the accused administered to the deceased caused the blockage on one side of the heart and caused the death.
18. Of course the accused is a prime suspect in the deceased’s death. He is alleged to have administered an injection to the deceased soon after which the deceased died. It seems he was a quack (fake Doctor) as he used to carry himself as a Doctor, and that is confirmed by the recovery of the assorted medicines on him. However, the question remains as to whether what he administered on the deceased caused the death.
19. In criminal cases, the onus rests on the prosecution to prove its case beyond any reasonable doubt. Placing Accused on his defence would be calling upon him to fill in the gaps in the prosecution’s case.



20. Having considered the evidence tendered before the court, the accused remains a suspect. The Investigating Officer through negligence or lack of knowledge failed miserably in his duties by failing to take the assorted medicines to the Government analyst to determine whether they caused the death.
21. I therefore find that the prosecution failed to establish a prima facie case to require the accused to defend himself. The Accused is therefore acquitted of the charge of Murder under section 306 (1) of the Criminal Procedure Code. He is set at liberty forthwith unless otherwise lawfully held.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAPENGURIA THIS 17TH DAY OF MARCH, 2026.

R. WENDOH

JUDGE

In the Presence of:-

Accused – present

Mr. Ndinyo Counsel for accused.

Ms. Koech for Prosecution Counsel

Juma/ Hellen Court Assistants

