



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Sang & another (Criminal Case E060 of 2021)  
[2026] KEHC 4285 (KLR) (31 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4285 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL CASE E060 OF 2021  
JK SERGON, J  
MARCH 31, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOSEPH KIPKOECH SANG ..... 1<sup>ST</sup> ACCUSED**

**DOMINIC KIPROTICH KOECH ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The two Accused Persons, namely: Joseph Kipkoech Sang and Dominic Kiprotich Koech, stand charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code (Cap 63, Laws of Kenya).
2. The particulars of the offence are that on 1<sup>st</sup> August 2020, at Londiani Forest near Kabianga Village in Londiani Sub-County within Kericho County, jointly with others not before the court, they murdered Abel Maina.
3. The prosecution called a total of Eight (8) witnesses in support of their case.
4. I have now carefully considered the evidence on record, the exhibits tendered, and the applicable law.
5. The test for determining whether a case to answer has been established was settled in the case of Ramanlal Trambaklal Bhatt v Republic [1957] EA 332, where the court held;  

“ A case to answer exists where a reasonable court, properly directing its mind to the law and the evidence, could convict the accused if he elected to remain silent.”
6. It is trite law that at this stage, the court is not required to evaluate the credibility of witnesses or weigh the evidence. The court must consider the evidence adduced by the prosecution at its highest, and if



that evidence, if believed by the trial court, could result in a conviction, then the accused must be called upon to defend themselves.

7. The Court of Appeal in *Festus Mwendwa Kioko & another v Republic* [2019] eKLR reiterated that the threshold for a case to answer is low. The court stated;

“At the close of the prosecution’s case, the trial court is not required to decide whether the evidence adduced is sufficient to convict. It is only required to determine whether there is sufficient evidence to put the accused on their defence.”

8. PW.1 – Florence Wangare Maina (Mother of the Deceased) testified that the deceased was her son. That on the material day, he went to work with friends. At 10 a.m., he returned briefly and stated that he and his friends had been chased by forest guards. Later that day, his friends returned without him. The following day, she learned that a person had been killed at Kabianga, and her son was identified at the mortuary.
9. While she stated she did not know the accused persons, her testimony establishes that the deceased was in the forest area where the incident occurred and that there was an altercation with persons alleged to be forest guards or herders.
10. PW.2 – Geoffrey Mbutia, who is an Assistant Chief, Tegunot Sub-Location stated that he received a call at midday on 1<sup>st</sup> August 2020 informing him that a child had been killed at Masaita Forest. He was told that the boy was being beaten by people who were looking for a stolen sheep. The witness testified that the people who assaulted the boy came from Kabianga Village.
11. Critically, the witness stated: “The person who called told me the incident occurred at Masaita Forest. He said the people who killed him came from Kabianga Forest.” The accused persons are from the Kabianga area. This evidence places the origin of the perpetrators in the vicinity of the accused.
12. PW.3 No. xxxxxx P.C. Eric Bii, a GSU Officer, testified that on 1<sup>st</sup> August 2020, while on off-duty, he heard noises and proceeded to the scene. He saw about 20 people who fled upon his approach. That he found the deceased lying on the ground with his hands tied with wire and marks all over his body. The 1<sup>st</sup> accused, Joseph Sang, remained at the scene, standing about 20–30 metres away. The witness asked the 1<sup>st</sup> accused what had happened. He testified that the 1<sup>st</sup> accused told him that the young man had been found in the forest by herders from Masaita who had been looking for a sheep. The witness further testified that the 1<sup>st</sup> accused stated he was “trying to defend the young man.” The witness identified the 1<sup>st</sup> accused in court. He did not see the 2<sup>nd</sup> accused at the scene.
13. PW.4 – Vincent Mesa Ratemo, a Forest Ranger, testified that he was on patrol on 1<sup>st</sup> August 2020 but did not witness the incident involving the deceased. He stated that he came to know the accused persons after their arrest as neighbours. His testimony does not directly link the accused to the offence but confirms the presence of forest rangers in the area on the material day.
14. PW.5 – PC Emmanuel Inziani testified that he is performing general duties at Londiani Police Station. He stated that he visited the scene a body of a young man without a shirt.
15. PW.6- Hillary Kipngeno Koskei, testified that he was at the scene. He stated:
- “I saw people running up and down. I overheard people saying that a thief had been caught. I rushed to where the children were. By that time the deceased had been beaten.”

The witness stated that the crowd was huge and he could not identify who assaulted the deceased.



16. PW7 Dr. Dominic Muhia testified and produced the postmortem report confirming that the deceased sustained multiple injuries including bruises, cuts, and clots. The cause of death was established to be the injuries sustained during the incident. The postmortem report was produced as an exhibit.
17. PW8 CPL Bernard Waweru, the investigating officer, testified that the 2<sup>nd</sup> accused suspected the deceased to be a thief and that he had stolen his sheep. That he raised an alarm about the theft. Villagers came and found the 2<sup>nd</sup> accused with the deceased. The 2<sup>nd</sup> accused was the one looking for a lost sheep and took the witness to the deceased.
18. At this stage of the proceedings, I am not required to determine whether the prosecution's evidence is credible or whether it will ultimately lead to a conviction. My duty is to determine whether there is sufficient evidence to require the accused persons to enter their defence.
19. I adopt the principle that the threshold for a case to answer is low. As held in *Ramanlal Trambaklal Bhatt v Republic* (supra), if a reasonable court, properly directing its mind to the law and the evidence, could convict the accused if they remained silent, then a case to answer exists.
20. The evidence against the 1<sup>st</sup> accused consists of:
  - Presence at the scene – P.C. Eric Bii found him standing 20–30 metres from the deceased.
  - Knowledge of the incident – He informed P.C. Eric Bii that the deceased had been found by herders and was beaten.
  - Failure to prevent the assault – Despite his proximity, he did not prevent the beating.
  - Statement that he was “defending” the deceased – This statement, if true, demonstrates his involvement in the incident.
21. The 1<sup>st</sup> accused was found at the scene of a mob lynching where a man was being beaten to death. His presence, knowledge, and proximity to the deceased constitute circumstantial evidence from which a reasonable court could infer participation in the assault. The fact that others fled upon the approach of P.C. Eric Bii while the 1<sup>st</sup> accused remained does not necessarily exculpate him; it may indicate that he felt he had no reason to flee because his actions were, in his view, justified.
22. I find that a reasonable court, if it believed the evidence of P.C. Eric Bii, could conclude that the 1<sup>st</sup> accused participated in the assault on the deceased. His own statement that he was “defending” the deceased is a matter of defence to be raised during his defence, not a ground for acquittal at this stage.
23. The evidence against the 2<sup>nd</sup> accused consists of:

He suspected the deceased of stealing his sheep. This provides a motive. He raised an alarm alerting the community that a thief had been caught. He was found with the deceased. Villagers came and found him with the deceased. He was also looking for a lost sheep. The investigating officer testified that the 2<sup>nd</sup> accused was the one looking for the sheep and took the witness to the deceased.
24. While no witness testified that they saw the 2<sup>nd</sup> accused strike the deceased, the doctrine of common intention (Section 21 of the Penal Code) applies. The evidence suggests that the 2<sup>nd</sup> accused initiated the incident by raising an alarm about a stolen sheep, confronted the deceased, and others joined in the assault. Under the doctrine of common intention, all persons who shared a common intention to commit the unlawful act are deemed to have committed the offence.



25. I find that a reasonable court, if it believed the investigating officer's testimony, could conclude that the 2<sup>nd</sup> accused shared a common intention with others to apprehend and punish the deceased, which resulted in his death.
26. Accordingly, I find that a prima facie case has been established against both accused persons sufficient to require them to make a defence.
27. Pursuant to Section 306(2) of the Criminal Procedure Code, I find that both accused persons have a case to answer and are hereby placed on their defence.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 31<sup>ST</sup> DAY OF MARCH, 2026**

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

C/Assistant – Rutoh/Naomi

Prosecutor – Karanja

Accused – Present in Person

Morata for Accused

Karanja for the ODPP

