



**Republic v Leliman (Criminal Case 16 of 2020)  
[2026] KEHC 4077 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4077 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL CASE 16 OF 2020  
EN MAINA, J  
MARCH 19, 2026**

**BETWEEN**

**THE REPUBLIC ..... PROSECUTION**

**AND**

**FREDRICK LELIMAN ..... ACCUSED**

**RULING**

1. Through an information dated 30th April 2020, the accused person, jointly with another not before court, deceased, charged with two counts of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. It is alleged that on 27th May 2016 at Kitanga Hotel in Mlolongo Township in Athi River Sub- County within Machakos County, they jointly murdered Jacob Mwendwa Mbai and Elizabeth Nduku. Each death forms the basis of one count.
3. The accused and his co-accused, now deceased pleaded not guilty to the prosecution proceeded to call sixteen (16) witnesses to prove its case. The evidence of the said witnesses was recorded partly by my predecessors, in this station and partly by myself.
4. After the close of the prosecution’s case Counsel for both sides agreed to make their arguments through written submissions. However, only those of the accused person were received.
5. Section 306(1) of the Criminal Procedures Code enjoins this court to consider the evidence adduced by the prosecution and the arguments put forth by Counsel for the Prosecution and the Accused and make a determination as to whether the Accused should be put on his defence.
6. In his submissions, Mr Michuki, learned Counsel for the accused, argued that there was no evidence to connect the accused person to this offence; that during cross examination one witness (PW2) was categorical that only one officer-Waweru had a firearm; that the witness testified that she knew Waweru



and the accused well as she used to stay near the police station. Counsel contended that another witness (PW6) stated that the accused was not at the scene. Counsel stated that the evidence of the officers who were in charge of the armoury at the material time was that the accused was not issued with a firearm on that day. Counsel asserted that at the close of the prosecution's case the evidence ought to be overwhelming in order for the accused to be put on his defence. Counsel placed reliance on the case of *Bhatt v Republic* [1957] EA 334. Counsel further stated that the evidence did not illustrate any prior actions as to the intentions of the accused on the date in issue. He reiterated that there was no evidence the accused had been issued with a firearm and that the evidence of the witnesses regarding who had a firearm and who did not was inconsistent.

Counsel argued that moreover, the bullets that killed the deceased were never recovered for matching with the cartridges recovered by the investigating officer. Counsel urged this court to find that the prosecution had not discharged its evidentiary burden of proving the elements of the offence of murder and of linking the accused to the offences charged and the court should acquit him at this stage.

7. There were no submissions from the prosecution's side.
8. At this stage all the court is required to consider is whether or not the prosecution has established a prima facie case against the accused person to warrant him to be put on his defence. As submitted by learned Counsel a prima facie case is one upon which a reasonable tribunal, properly directing itself would convict even were the accused to remain silent if put on his defence. The court is not required to pronounce itself conclusively on the merits of the case.
9. I have carefully considered the evidence of the prosecution witnesses including the exhibits, the documentary evidence and submissions on record and I am satisfied that the prosecution has established a prima facie case against the accused person sufficiently to warrant him to be put on his defence. He shall therefore be required to enter his defence as required under Section 306(2) of the Criminal Procedure Code.

It is so ordered.

**RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 19TH DAY OF MARCH 2026.**

**SIGNED BY/FOR:**

**HON. LADY JUSTICE E.N. MAINA**

**THE JUDICIARY OF KENYA.**

**MACHAKOS HIGH COURT**

**HIGH COURT DIV**

**DATE: 2026-03-22 14:19:22**

