



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kamau (Criminal Case E1796 of 2023)
[2026] KEMC 11 (KLR) (10 February 2026) (Ruling)**

Neutral citation: [2026] KEMC 11 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CRIMINAL CASE E1796 OF 2023
PA NDEGE, SPM
FEBRUARY 10, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

TABITHA MUTHONI KAMAU ACCUSED

RULING

1. Tabitha Muthoni Kamau, is charged with the offence of Offensive Conduct contrary to Section 94(1) of the *Penal Code*. Particulars of the charge are that on the 25th day of April, 2023 at Naishi Game location, in Njoro sub-County within Nakuru County, in a public place namely Naishi game, she used abusive words namely ‘kwenda huko, uko na tumbo kubwa, hauna akili, shetani, mbwa, Malaya wewe’ to Harun Kariuki, with intent to provoke a breach of the peace.
2. Facts of the case are that on the 25th April, 2023, PW1 Harun Kariuki, the Complainant was at his place of work, in a farm – weeding. He was standing on for the farm’s caretaker who was then not present. The farm has a fence and a house. He was therefore cultivating and grazing cattle on it. That while in the farm, at around 4.30pm, the accused person, who is his sister-in-law, married to his brother, trespassed into the farm through the fence. That he went to prevent her from causing destruction therein. That in the process, the accused abused him as follows: ‘That I am boasting with someone else’s farm, with a big belly and I have no brain. That I am a cunt, a devil etc. some other shameful words’¹.
3. He stated that he could not continue with the work. He was with his wife, PW2, Beatrice Gatheri, and their children. They thus decided to go home. He was disturbed throughout the night and in the morning, he decided to go make a report where they were attended to by PW3, No. 104390 PC Asenath Nyamache of Naishi Police Station.

¹ Refer to his testimony



4. PW2, Beatrice Gatheri is the wife to the complainant. She corroborated the complainant's testimony and evidence. PW3 was then able to arrest the accused and charged her with the present offence. The prosecution's case then closed with the evidence of the three witnesses.
5. At this stage the court is required to make a finding whether a prima facie case has been established or not. The main issue at this stage is therefore, whether the prosecution, in discharging its burden of proof, has established a prima facie case sufficient to require me to call upon the accused herein to make her defence as required by section 211 of the Criminal Procedure Code.
6. The case of Republic vrs Kennedy Otieno & 6 others (1998) eKLR, gave a simpler explanation of what constitutes a prima facie case. The High Court held that it is a case where there is sufficient evidence upon which the court would convict the accused if no explanation is given.
7. The whole issue of whether a prima facie case has been made or not is a legal, rather, than a factual one. To prove the offence the Accused faced the Prosecution was required to prove that:
 - (i) The Accused was at a public place.
 - (ii) she used abusive words as against the Complainant.
 - (iii) she acted with an intent to provoke a breach of the peace.
8. The Penal Code defines public place as:

“public place” or “public premises” includes any public way and any building, place or conveyance to which, for the time being, the public are entitled or permitted to have access either without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meetings or assembly or as an open court;
9. The Interpretation and General Provisions Act on the other hand defines a public place as: “public place” includes every place to which the public are entitled or permitted to have access whether on payment or otherwise;
10. The Accused, per the evidence of the Prosecution trespassed into a private farm which was at the time under the care of the complainant. The fact that the Accused was being alleged to have trespassed into the farm, in itself, is sufficient to prove that this farm was not a public place, where members of the public were allowed to enter either without any condition or upon condition of making any payment as defined hereinabove. The Accused thus went to a private farm as opposed to a public place.
11. When the utterances in respect of the Complainant were made, it was confirmed that there was no member of the public present. The complainant's wife or daughter cannot be said to be members of the public. Those are members of his nuclear family. Whereas the words could have caused a breach of the peace as defined in Mule v. Republic Criminal Appeal No. 873 of 1982, I find that the offence of Creating Disturbance in a Manner Likely to Cause a Breach of the Peace as provided for under section 95 of the Penal Code, though cognate to the offence with which the accused herein is charge, cannot be said to be minor or lesser than the later offence.
12. In the premises it is unsafe to call upon the accused person herein to make her defence. The accused herein should not therefore be called upon to make her defence on account of the evidence adduced against her by the prosecution who, as aforesaid, throughout herein bore the burden of proof. She is entitled to remain silent because the prosecution's case appears unproved. This is therefore a case that should not proceed beyond the prosecution's case. The prosecution has thus been unable to prove its



case to the required standard of beyond reasonable doubt at this stage. The High Court in *Republic vrs Kennedy Otieno & 6 others*, supra, addressed the point as follows: -

It must be remembered that at the close of prosecution case, an accused has a right to keep silent in his defence. An accused person is brought to court by the prosecution. It is upon the prosecution to prove a case against an accused person beyond reasonable doubt. An accused person is under no obligation to prove his innocence. The burden of proving his guilt lies on the prosecution.

13. Guided by the above decision, I do hereby find that no prima facie case has been disclosed to warrant the accused herein to be called upon to make her defence herein. The upshot is that I do hereby enter a finding of not guilty against the accused person herein.

Final Disposal Orders

14. I do therefore find no prima facie case disclosed herein and pursuant to the provisions of section 210 of the *Criminal Procedure Code*, I do hereby dismiss the charge against the accused person herein and consequently do hereby acquit the accused person of the offence of Offensive Conduct contrary to section 94(1) of the *Penal Code*. Her cash bail is also hereby released to the depositor.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 10TH DAY OF FEBRUARY, 2026

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Court interpreter: Wanyoike

Prosecutor: Macharia

Accused: Present

Victim: Absent

