

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MALINDI
CRIMINAL CASE NO. E003 OF 2024

REPUBLIC.....PROSECUTOR/
APPLICANT

VERSUS

PAUL NTHENGE MACKENZIE
alias MTUMISHI alias NABII alias PAPAA.....1ST
ACCUSED
SMART DERI MWAKALAMA alias MZEE SMART.....2ND
ACCUSED
STEPHEN SANGA MUYE alias STEVE alias STEVE WA MTWAPA.....3RD
ACCUSED
EVANS KOLOMBE SIRYA.....4TH
ACCUSED
KELVIN SUDI ASENA alias ALFRED ASENA
alias BABA ASHLEY alias SHITEMI ALFRED.....5TH
ACCUSED
STEPHEN OMINDE LWANGU
alias SERAPHINE AZUNGILA LWANGU alias STEPHANO.....6TH
ACCUSED
ENOS AMANYA alias AMOS NGALA AMANYA alias ALLELUYA.....7TH
ACCUSED
JULIUS KATANA KAZUNGU.....8TH
ACCUSED
CHARLES KALUME CHARO alias MUSA SULEIMAN.....9TH
ACCUSED
MICHAEL MWERI BAYA.....10TH
ACCUSED
TITUS MUNYAO MUSYOKA alias JUSTUS MAKAU MUSYOKA
alias TITUS MNONO.....11TH
ACCUSED
ERNEST SAFARI KAZUNGU KATANA alias EARNEST KAZUNGU....12TH
ACCUSED
DAVID AMBWAYA AMANYA.....13TH
ACCUSED
EMMANUEL AMANI KILUMO alias CHILUMO alias BABA NOA....14TH
ACCUSED
JOSEPH BOKOLE BIMRAMBA alias JOSEPH KENGA BOKOLE.....15TH
ACCUSED
NEWTON KIMATHI IKUNDA alias KIM alias YUSUFU.....16TH
ACCUSED
ROBERT KAHINDI KATANA alias BABA NEEMA.....17TH
ACCUSED

ALEX MUNANGWE ODARI alias ALEX WA GALILAYA.....	18 TH
ACCUSED	
LUCAS OWINO OGOLA.....	19 TH
ACCUSED	
MARK KIOGORA KIARA alias JOHNMARK KIARA.....	20 TH
ACCUSED	
MAURICE MACHACHA.....	21 ST
ACCUSED	
MARY KADZO KAHINDI alias MARY SMART.....	22 ND
ACCUSED	
SIMON MUSEMBI MUNYOKI alias SIMON SIMIYU.....	23 RD
ACCUSED	
MWINZI KAVENGE alias KITENGELA alias STEPHEN MWINZI.....	24 TH
ACCUSED	
GILBERT KEA KATANA.....	25 TH
ACCUSED	
STEVEN NGUGI KIKO.....	26 TH
ACCUSED	
EDISON SAFARI MNYAMBO alias BABA SIFA.....	27 TH
ACCUSED	
ALFONZE CHOMBA ELIUD alias ALPHONZE CHOMBA ELIUD alias ALPHONES TSOMBA ELIUD alias BABA NATHAN.....	28 TH
ACCUSED	
AMANI SAMUEL KENGA alias BABA JOYCE.....	29 TH
ACCUSED	
ANNE ANYOSO ALUKHWE alias ANN AUKO OKELO.....	30 TH
ACCUSED	
PETER RAMADHANI KAHASO alias PETER MENZA TUVA alias BABA SARA.....	31 ST
ACCUSED	

(whether or not a prima facie case has been made out by the prosecution to require the accused persons to be put on their defence in terms of Section 306 (2) of the Criminal Procedure Code (Cap. 75) Laws of Kenya.)

RULING.

Introduction.

1. This case arises from events that unfolded in Shakahola Forest, Kilifi County, and has drawn National and International attention for the high scale of loss of life that occurred within a closed

religious setting under the alleged direction of Good News International Ministries, founded by Paul Nthenge Mackenzie (1st accused) in 2003 and registered in 2010.

- 2.** The evidence traces the Ministry's expansion into media through Good News Media (K) Limited, also known as Times TV, in 2012, and its subsequent relocation to Shakahola Ranch in 2019. The evidence on record reveals that followers were attracted by promises of agricultural land and communal settlement. Their membership significantly increased during the COVID-19 period.
- 3.** It is the Prosecution's case that, that after the members had settled in Shakahola, there emerged a rigid and isolative system characterised by indoctrination to fast to death in order to ascend to heaven and meet Jesus. It is further alleged that a structured hierarchy of death was propagated, placing children first, the youth, women and then men, with the men in that order, with the 1st accused positioning and his family as the last to die.
- 4.** The evidence further describes an environment of control in which followers allegedly surrendered property, destroyed personal documents, and severed contact with family and society including leaving their employment. They lived in an isolated environment (forest) with limited access to external interference.
- 5.** When State search and rescue operations commenced in April 2023, mass graves were uncovered. By October 2023, 429 bodies had been exhumed, alongside the rescue of 67 adults and 25 children, revealing the magnitude of the crisis under investigation.

6. Following these investigations, 31 individuals were charged with 191 counts of murder contrary to **Section 203** as read with **Section 204** of the Penal Code.
7. One accused person, the 7th accused, Enos Amanya alias Amos Ngala Amanya alias Aleluya, entered a plea of guilty and is awaiting sentence. These proceedings concern the remaining 30 accused persons.
8. The Prosecution called 121 witnesses in support of its case.
9. After the close of the prosecution's case, directions were issued and parties were directed to file submissions on whether the accused had a case to answer and should be placed on their defence.

Written Submissions

Prosecution

10. The Prosecution submitted that the threshold for establishing a prima facie case is settled in **Ramanlal Trambaklal Bhatt vs. Republic [1957] E.A. 332**, namely whether a reasonable tribunal, properly directing itself on the law and the evidence, could convict if no explanation were offered by the defence. Reliance was also placed on **Republic v. Abdi Ibrahim Owl (Garissa High Court Criminal Case No. 6 of 2011); [2013] KEHC 2122 (KLR)** on the meaning of a prima facie case. Further reliance was placed on **Republic v. SamuelKaranja Kiria (Nairobi High Court Criminal Case No. 13 of 2004); [2009] eKLR** and **Ronald Nyaga Kiura v. Republic (Criminal Revision No. 124 of 2018); [2018] KEHC 5030 (KLR)** for the proposition that, at this stage, the Court is not concerned with

determining guilt beyond reasonable doubt, but only whether sufficient evidence exists to warrant placing the accused on their defence.

- 11.** On the fact and cause of death, the Prosecution submitted that the deaths of the 191 deceased children were conclusively established through the evidence of Dr. Richard Njoroge [PW100], who produced the post-mortem reports and confirmed that all the children were exhumed from the Shakahola forest. His evidence was corroborated by CIP Sawe Kiige [PW44] and Senior Sergeant Livingstone Lihanda [PW45], who documented the exhumation, forensic examination, and DNA processes.
- 12.** The Prosecution further relied on the testimony of Detective CPL. Andrew Chemik Agesa Kisaka [PW16], whose evidence was that the children died from starvation, features consistent with starvation, asphyxia, neck compression, and traumatic head injury. However, where decomposition rendered some causes of death unascertainable, the Prosecution invoked **section 6** of the Evidence Act and submitted the deaths formed part of the same transaction.
- 13.** The Prosecution further submitted that each accused person was not only linked to Shakahola but also to the 1st Accused Paul Nthenge Mckenzie, and the doctrines and practices of Good News International Ministries including the doctrine of fasting to death. G.H. [PW1] identified all accused persons as persons known to him from Shakahola and described their respective roles in the organisation and enforcement of the fast. Additional evidence of their arrest from PW62, PW68, and PW92 placed several accused persons within the vicinity of, or fleeing from Shakahola.

- 14.** The Prosecution submitted that the evidence demonstrated the hard fast was initiated and directed by the 1st Accused, who ordered that children should fast first and continue without food or water until death. It was further submitted that the fast was enforced by certain accused persons through coercion and violence.
- 15.** On the evidence of malice aforethought, the Prosecution relied on **section 206(b)** of the Penal Code, submitting that the accused persons knew that depriving children of food and enforcing prolonged fasting would probably cause death or grievous harm. DNA evidence further linked identified and unidentified deceased children to several accused persons. The Prosecution argued that the deaths of the children from starvation within Shakahola constituted clear evidence of unlawful omissions and unlawful acts undertaken with full knowledge of their fatal consequences.
- 16.** Accordingly, the Prosecution submitted that it had established a cogent evidential nexus between each accused person and the unlawful deaths of the 191 children. They urged the Court to find that a prima facie case had been made out against each accused person and they should be placed on their defence.

Accused Persons

- 17.** The accused persons in rebuttal submitted that the Prosecution had failed to establish a prima facie case to the required standard of beyond reasonable doubt, as required under the Constitution and settled criminal jurisprudence. It was contended that the evidentiary material presented does not establish the identity of

the alleged deceased persons, the cause of death, or any credible nexus between the accused persons and the alleged deaths forming the subject of the charge sheet dated 11th January 2024.

- 18.** The Defence maintained that the Prosecution's case is largely founded on circumstantial evidence, hearsay accounts, and inconclusive forensic findings which, even when taken at their highest, fall short of the threshold required for a conviction.
- 19.** It was further submitted that identity of the deceased is a fundamental element of the offence of murder as articulated in **Republic v Juma Takano Dhadho & Another [2021] KEHC 959 (KLR)**, and that the same has not been strictly proved in respect of a substantial number of counts. The Defence pointed to the evidence of PW45, who confirmed that for Counts 12 - 191 there were no names attached to the deceased persons, and that identification was based solely on-site reference numbers without definitive DNA linkage. It was further highlighted that in certain graves, multiple bodies were recovered, rendering it impossible to attribute specific remains to specific counts with certainty.
- 20.** The Defence also relied on the testimony of PW55, the Government Analyst, who confirmed that out of 453 bodies examined, only 69 were positively identified through DNA analysis, leaving a significant number of bodies unidentified. It was emphasised that no DNA match was established for key named victims in Counts 1 and 2, thereby raising reasonable doubt as to whether the alleged deceased persons correspond to the remains exhumed.
- 21.** PW96 further introduced uncertainty in age estimation, acknowledging a margin of error in dental analysis, while PW100

confirmed that for 110 bodies the cause of death could not be ascertained due to advanced decomposition.

- 22.** It was the Defence submission that this evidential matrix creates a material gap in the Prosecution's case, particularly where identity, age, and cause of death are not established with certainty. The Court was urged to find that such deficiencies are not mere technicalities but go to the root of the offence charged, and therefore render the prosecution case unsafe.
- 23.** On the issue of the cause of death, the Defence submitted that the offence of murder under **Section 203** of the Penal Code requires strict proof of causation and malice aforethought, as reinforced in **Joseph Kimani Njau v Republic [2014] eKLR** and **Republic v Julius Mbaabu M'Imwili [2020] KEHC 6672 (KLR)**. It was argued that PW100's evidence demonstrated that in 110 cases the cause of death remained entirely unascertained, while in the remaining cases the findings were equivocal, being described as "**features consistent with starvation**" or "**starvation**", without exclusion of alternative causes.
- 24.** The Defence submitted that such medical conclusions are descriptive rather than determinative, and do not establish legal causation beyond reasonable doubt. It was further argued that the absence of toxicological findings, as confirmed by PW46, weakens any inference of unlawful killing, and leaves open reasonable hypotheses such as natural causes, environmental deprivation, or voluntary conduct by the deceased persons themselves.
- 25.** On the question of malice aforethought, reliance was placed on **Hyam v DPP 1974 A.C.**, **R v Nedrick (1986) 1 WLR**, and **R v**

Baskerville [1916] K.B 658, to submit that intention or knowledge must be strictly proved and cannot be inferred from conjecture. The Defence contended that the evidence of PW1 was largely hearsay and incapable of establishing intent, while other witnesses, including PW3, PW4, PW12, PW23, and PW52, confirmed that fasting was voluntary and based on personal decision-making. It was therefore submitted that any inference of coercion or deliberate causation of death is unsupported by the evidentiary record.

- 26.** The Defence further invoked the principle of *novus actus interveniens* as articulated in **R v Kennedy (No 2) [2007] UKHL 38**, arguing that voluntary and informed acts of the deceased persons broke the chain of causation. It was submitted that individuals exercised free choice, had access to food as evidenced by PW7, and in several instances successfully escaped, as demonstrated by PW9, PW12, and PW39. These voluntary acts, it was argued, sever any legal causal connection between the alleged conduct of the accused and the resulting deaths.
- 27.** Closely linked to this, the Defence relied on the doctrine of *volenti non fit injuria*, submitting that where individuals knowingly and voluntarily engage in conduct that results in harm to themselves, liability cannot be attributed to another party in the absence of coercion or compulsion.
- 28.** On linkage, the Defence submitted that no direct evidence exists connecting any accused person to any specific death. It was emphasised that multiple prosecution witnesses, including PW1, PW2, PW3, PW5, PW6, PW8, PW11, PW12, and PW52, confirmed during cross-examination that they did not witness any killing or

physical act causing death. The Defence therefore contended that the Prosecution's case is entirely circumstantial.

- 29.** It was further submitted that the circumstantial evidence fails to meet the strict tests set out in **Abanga alias Onyango v Republic (Criminal Appeal No. 32 of 1990)** and **Republic v Kipkering Arap Koske & Another [1949] 16 EACA 135**, as it does not form a complete chain pointing irresistibly to the guilt of the accused persons. Instead, the evidence discloses multiple independent intervening factors, including parental decisions, voluntary fasting, and unidentified causes of death.
- 30.** On common intention under **Section 21** of the Penal Code, the Defence submitted that the Prosecution failed to establish a shared design, uniform participation, or foreseeability of death as a probable consequence of the various roles performed by the accused persons. It was argued that the evidence shows disparate functions, including guards, cooks, grave diggers, and persons with no defined roles, thereby negating any inference of a common criminal enterprise.
- 31.** The Defence further submitted that individual parental decisions, as evidenced by PW8, PW11, and PW6, constituted independent intervening acts that broke any chain of causation, consistent with the reasoning in **R v KENNEDY (No 2) [2007] UKHL 38**.
- 32.** On criminal responsibility, reliance was placed on **Section 20** of the Penal Code and **Ali Kajoto Ali vs Republic (Criminal Appeal No. 51 of 2021) [2024] KECA 1168 (KLR)**, to submit that liability must be individually proved and cannot be imposed collectively without specific evidence of participation.

- 33.** On whether the children had capacity in decision making, the Defence submitted that the statutory framework under **Section 14** of the Penal Code and **Section 191** of the Children Act confirms that capacity must be assessed within legal parameters, and that the testimony of child witnesses demonstrated decision-making capacity inconsistent with any assertion of incapacity.
- 34.** On religious practice, it was submitted that **Article 32** of the Constitution protects freedom of religion, including teaching and observance, and that the evidence shows voluntary adherence rather than coercion or compulsion.
- 35.** Finally, on whether a prima facie case has been established, the Defence relied on **Ramanlal Trambaklal Bhatt v R [1957] EA 332**, submitting that the evidence is insufficient to sustain a conviction even if uncontroverted, and that it contains significant gaps, inconsistencies, and unresolved forensic uncertainties.
- 36.** In conclusion, the Defence submitted that the Prosecution has failed to establish identity, causation, linkage, malice aforethought, and criminal responsibility beyond reasonable doubt, and that the accused persons are therefore entitled to an acquittal on all counts.

Issues for determination

- 37.** The issue for determination is whether or not a prima facie case has been made out by the prosecution to warrant the accused to be put on their defence in terms of section 306 (2) of the Criminal Procedure Code (Cap. 75) Laws of Kenya.

Analysis and Determination.

38. Section 306 of the Criminal Procedure Code (Cap 75) Laws of Kenya 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.

39. In defining what a prima facie case is, the Court of Appeal in **Ramanlal Trambaklal Bhatt vs R [1957] EA 332** expressed itself 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 on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near to 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 is true as Wilson J said that the Court is not required at that stage to decide finally whether the evidence is worthy of credit or whether if believed it is weighty enough to prove the case conclusively: That determination can only properly be made when the case for the defence has been heard. 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.”

40. At this stage, the Court is not called upon to make definitive findings on the charges before court and neither is it called upon to conduct a rational explication of the evidence on record. For doing so would prove foolhardy and the court would fall into the trap as cautioned by **Trevelyan and Chesoni, JJ** in **Festo Wandera Mukando vs. The Republic [1980] KLR 103** where the learned judges stated that;

“...we once more draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgement. Where a submission of “no case” is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons

should be given; for then that is the end to the case or the count or counts concerned."

41. It has been restated time without number that a *prima facie* case is not necessarily one that must succeed hence a finding that a *prima facie* case has been established does not render an obligation upon the Court to return a guilty verdict after full trial. At the end of the trial, the court is still under an obligation to evaluate the evidence in totality and make a determination as to whether the prosecution has proved its case beyond reasonable doubt, which is not the same standard applicable in determining whether a *prima facie* case exists. I must hasten to add that by finding that the accused persons have a case to answer, it does not necessarily mean that the burden of proof shifts to the accused persons as this burden remains with the prosecution throughout the trial.

42. In **Republic vs Jones Mutua Anthony & 3 others [2019] eKLR**, Justice Odunga (as he then was) while weighing on the standard required for the Court to find that a *prima facie* case has been established stated as follows:

"...There is no magic in finding that there is a case to answer and a case to answer ought only to be found where the prosecution's case, on its own, may possibly, though not necessarily, succeed. An accused person should not be put on his defence in the hope that he may prop up or give life to an otherwise hopeless case or a case that is dead on arrival..."
(Emphasis added).

43. Indeed, I agree with the above holding by the learned Judge in **Republic vs Jones Mutua Antony & 3 others (supra)**. For the

foregoing reasons, I will refrain from making conclusive findings on the guilt or otherwise of the accused persons at this stage.

- 44.** I have considered the evidence of one hundred and twenty-one witnesses, including expert testimony, post-mortem reports, government analyst findings, and the totality of material placed before the Court. It is not in dispute, that bodies of children were exhumed at Shakahola, that some of those remains were identified and some of those remains were identified and released to their relatives for burial. It is further not disputed that several relatives testified before this Court as witnesses confirming the deaths of their children. What remains in issue at this stage therefore, is not whether deaths occurred, but whether thirty accused persons before this Court caused those deaths.
- 45.** The witnesses placed the accused persons at or within the vicinity of the scene of crime (Shakahola) at the material time. Some were described as village elders, guards, grave diggers, cooks and others as performing various roles within the settlement. However, as to whether there established direct evidence or circumstantial evidence, linking any specific accused person to the act causing death of any specific child is not for determination at this stage of the proceedings.
- 46.** The Court further notes the prosecution's reliance on the doctrine of common intention. It is submitted that the accused persons acted in concert towards a common unlawful purpose, and that liability may therefore attach collectively under the provisions of **Section 21** of the Penal Code. It is also contended that the presence of the accused persons at the scene, together with the

victims, raises an inference consistent with participation in a joint enterprise.

- 47.** Additionally, reliance has been placed on the principle of “last seen together”, in that the evidence places the accused persons in proximity to the deceased persons within Shakahola. It has been argued that, in the circumstances of this case, an evidential burden arises for the accused persons, particularly given their roles within the organisation, to offer an explanation as to the events leading to the deaths. This, however, does not amount to a reversal of the legal burden of proof, which remains throughout on the prosecution.
- 48.** At this stage, the Court is not required to make any definitive finding of guilt. The question is whether the evidence, taken as is, discloses a prima facie case requiring the accused persons to be put on their defence. I am satisfied that it does. The expert reports, the recovery of bodies, and the testimonies of witnesses who place the accused persons at the *locus in quo*, collectively establish a prima facie case.
- 49.** Accordingly, I find that a prima facie case has been established against all the accused persons on all counts. I therefore place each of the accused persons on their defence in accordance with Section 211 of the Criminal Procedure Code, Cap 75 Laws of Kenya.

Orders accordingly.

**Ruling dated and delivered in court this 15th day of April
2026**

**D. KAVEDZA
JUDGE**

In the presence of:

Ms. Ngina h/b for Mr. Jami, Mr. Owiti, & Ms. Rubia for the State.

Mr. Obonyo for the Accused

Ms. Karimi Court Assistant.

ORIGINAL