

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO. E050 OF 2022

REPUBLIC.....PROSECUTOR
VERSUS

ERNEST ALUBE OMUSILWA.....ACCUSED

RULING

1. The accused is charged with *murder* contrary to section 203 as read with section 204 of the **Penal Code**.
2. The Director of Public Prosecutions informs the High Court that on 15th July 2022, at Kwa Wakulima area in Kiambiu slums within Nairobi County, he murdered *Alex Indimuli alias Avune* (hereafter *the deceased*).
3. The prosecution called *six* witnesses. One of them appeared before my predecessor, *Ogembo J.* On 19th October 2023, and, pursuant to section 200 (3) of the **Criminal Procedure Code**, the accused elected to proceed from where the matter had reached.
4. I am now called upon to determine whether there is *sufficient* evidence calling for a rebuttal from the accused.
5. The Republic lodged submissions dated 18th February 2026 while those by the accused are dated 11th March 2026.

6. According to the learned counsel for the Republic, *Ms. M. Kigira*, there is direct evidence linking the accused to the homicide. She relied a number of authorities including ***Bhatt v Republic*** [1957] E.A. 332, ***Ronald Nyaga Kiura v Republic*** [2018] eKLR, ***Republic v Andrew Mueche Omwenga*** [2009] KEHC 1573 (KLR) and ***Republic v Ahmad Mohamed Abolfathi*** [2019] KESC 48 (KLR).
7. But according to learned counsel for the accused, *Ms. Gituma*, the accused and the deceased were thoroughly intoxicated; and, it follows that the accused had no *mens rea* to kill the deceased. Furthermore, the scene of the crime had been tampered with long before the police got there. In a synopsis, she submitted that the accused has no case to answer.
8. I have paid heed to the evidence of some of the key witnesses. According to the deceased's brother, *Musa Imbwaka Mbiru* (PW1), the deceased had been stabbed on the head, neck, hand, wrist, legs and the stomach. He told him that the accused stabbed him over a dispute of Kshs 500.
9. *Sergeant Bernard Sila* (PW5) testified that on 15th July 2022, he was at Kiambiu Police Post when *Titus Okoth* (PW6) reported

that his two tenants (accused and deceased) were engaged in a dangerous fight at his plot. PW5 and his colleague, *PC Rotich*, went to the scene which was about 300 metres from the post. They found Alex the deceased lying on the floor with bloodstained clothes. He had several stab-wounds. The accused then approached them holding a kitchen knife (exhibit 7) and told them that the deceased stabbed him with it on his forehead. Upon cross examination PW5 said that the accused was drunk.

10. PW6 had gone to Kosovo to meet with a tenant. He then heard a commotion emanating from the other block that he owns. When he went there, he saw the accused with bloodstained clothes and wielding a hammer and a knife. He had an injury on his head.

11. *Henry Kiptoo Sang* (PW3) is a Government analyst. In his report dated 6th May 2024 (exhibit 2), he found that the DNA from the broken knife marked "C" (exhibit 7) had a mixture of two profiles: One for from the deceased and another from an unknown person. The DNA from the bedsheet marked "E" (exhibit 5) was a mixture of one from the deceased and that of

the accused.

12. The postmortem was carried out by *Dr. David Atandi* (PW2).

According to the postmortem report (exhibit 1), the cause of death was “*sepsis due to bowel perforation as a result of penetrating abdominal injury due to sharp force trauma*”.

13. It bears repeating that the accused is still deemed *innocent* at this stage. Furthermore, the inquiry at this juncture is merely to establish if a *prima facie* case has been made out requiring a *rebuttal* from the accused.

14. Upon appraisal of that evidence; and, well guided by ***Bhatt v Republic*** [1957] E.A. 332 and ***R v Kipkering arap Koske & another*** 16 EACA 135 (1949), I find that the Republic has established a *prima facie* case.

15. Accordingly, under the provisions of section 306 (2) of the **Criminal Procedure Code**, I hereby place the accused person on his defence.

It is so ordered.

DATED, SIGNED and **DELIVERED** at **NAIROBI** this 23rd day of April 2026.

KANYI KIMONDO

JUDGE

Ruling read virtually on *Microsoft Teams* in the presence of: -

The accused.

Ms. P. Maina for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

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