

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL CASE NO. 40 OF 2012

REPUBLIC PROSECUTOR

VERSUS

DENNIS MANGO MURASI

ACCUSED

RULING

1. The accused person herein, Dennis Mango Murasi, is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. At the close of the prosecution's case, the defence submitted that no prima facie case had been established to warrant placing the accused on his defence. This Court is therefore called upon to determine whether the prosecution has adduced sufficient evidence to require the accused to respond under Section 306(2) of the Criminal Procedure Code.

ISSUES FOR DETERMINATION

3. The sole issue for determination is:

- I. Whether the prosecution has established a prima facie case against the accused person sufficient to place him on his defence.

ANALYSIS AND DETERMINATION

4. The law governing a finding of a case to answer is well settled. Section 306(2) of the Criminal Procedure Code requires the Court to place an accused on his defence if there is evidence that he committed the offence.
5. In the landmark case of **Ramanlal Trambaklal Bhatt v Republic [1957] EA 332**, *the Court held that a prima facie case is one on which a reasonable tribunal, properly directing its mind to the law and evidence could convict if no explanation is offered by the defence.*
6. Further guidance was given in **Republic v Galbraith [1981] 1 WLR 1039**, *where it was held that where there is some evidence, even if weak, the matter should proceed to defence so long as it is not wholly discredited.*
7. In **Republic v Samuel Karanja Kiria [2019] eKLR**, *the Court emphasized that at this stage, the Court should not make*

definitive findings of fact but should only determine whether there is evidence requiring an answer.

8. To establish a charge of murder, the prosecution must prove:
 - a. The fact and cause of death;
 - b. That the death resulted from an unlawful act or omission;
 - c. That the accused was responsible for the unlawful act;
 - d. That the accused acted with malice aforethought
9. PW2, the pathologist, confirmed that the deceased died as a result of a stab wound. This element is firmly established.
10. The nature of the injuries confirms that the death resulted from an unlawful act.
11. PW3 testified that he found the accused being beaten by a mob immediately after the incident. PW4 and PW5 corroborated the presence of a violent scene involving a student who had allegedly stabbed another.
12. The evidence consistently points to a stabbing incident occurring within a confined institutional setting, followed by immediate mob action.
13. In **Republic v Kipkering Arap Koske & Another [1949] EACA 135**, the Court held that circumstantial evidence can found a conviction if it forms a complete chain.

14. At this stage, however, the Court is not required to determine whether the chain is complete beyond reasonable doubt, but whether it raises a case requiring explanation. The nature of the injury (*a fatal stabbing*) is capable of establishing malice aforethought under Section 206 of the Penal Code, subject to further explanation.

15. The defence has strongly attacked the prosecution's case as being based on hearsay and lack of identification. While these concerns are valid and weighty, they go to the probative value and credibility of the evidence, which is properly tested after the defence case.

16. The Court is mindful of the caution in **Republic v Jagjivan M. Patel & Others [2014] eKLR**, *that an accused should not be called upon to fill gaps in the prosecution case. However, the Court must also avoid prematurely terminating proceedings where there is some evidence linking the accused to the offence.*

17. In the present case:

- There is evidence of a fatal stabbing;

- There is evidence placing the accused at the scene immediately after the stabbing.
- There is evidence of mob justice directed at the accused in connection with the incident.

18. These factors, taken together, establish a prima facie nexus requiring explanation.

19. As stated in *Bhatt v Republic* (supra), a case to answer exists where a reasonable tribunal could convict if no explanation is offered. This Court finds that such a threshold has been met.

CONCLUSION

20. Upon careful consideration of the evidence on record and the applicable law, this Court finds that:

- The prosecution has established a prima facie case against the accused;
- The accused should be afforded an opportunity to respond to the allegations.

21. Accordingly, pursuant to Section 306(2) of the Criminal Procedure Code, this Court finds that the accused has a case to

answer. The accused, DENNIS MANGO MURASI, is hereby placed on his defence.

22. Orders accordingly.

23. Defence hearing on 21.9.2026.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 21st DAY OF APRIL, 2026.

S.N.MBUNGI

JUDGE

In the presence:-

Ruling delivered in open court in the presence of Ms. Mburu for the Accused, Ms. Emily Prosecutor and Ms. Velma Court Assistant.