



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Zakaria & another (Criminal Case E008 of 2022)  
[2026] KEHC 4460 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4460 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CRIMINAL CASE E008 OF 2022  
TW CHERERE, J  
MARCH 19, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOHN MAYENGA ZAKARIA ..... 1<sup>ST</sup> ACCUSED**

**JAMES ONDUSO MOSE ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The accused persons, John Mayenga Zakaria and James Onduso Mose, are jointly charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the charge are that on 01<sup>st</sup> January 2022 at Bomonyanya Sub-location in Nyamira County, jointly with others not before court, they murdered Duke Ongaga.
2. The prosecution called six witnesses and thereafter closed its case. PW1, Carren Kwamboka Nyaturo, the mother of the deceased, testified that upon hearing screams she rushed to the road and found the deceased on a motorcycle. She stated that she saw Edwin Nyangena strike the deceased on the head with a slasher. As she attempted to assist the deceased, she was speared on the chest. Her testimony attributed the attack on the deceased to individuals other than the accused persons before the court.
3. PW3, Zacharia Onguso Nyatoro, the father of the deceased, testified that he received information that his son had been killed while he was in church. On his way to the scene he encountered a motorcycle carrying several individuals. He later found the body of the deceased near the gate of the 1<sup>st</sup> accused's home and also found his wife injured. However, he stated that he did not see who killed his son.
4. PW5, Stephen Nyang'au Onguso, a brother of the deceased, testified that the deceased was attacked by several individuals including Clinton Job, Onyancha Mayenga and Edwin Mayenga. He stated that Clinton cut off the deceased's hand while the others attacked him with pangas. Importantly, he testified that the accused persons before the court did not attack the deceased or their mother.



5. PW6, Edwin Nchoga Zacharia, testified that when he arrived at the scene, he found the deceased already lying on the ground with severe injuries and his mother also injured. He stated that he did not see who attacked the deceased or injured his mother.
6. PW4, a Senior Clinical Officer at Nyamira County Hospital, produced the post-mortem report on behalf of Dr. Fredrick Goga, who conducted the examination. The post-mortem was conducted on 03rd January 2022 at Nyamira County Hospital. The examination revealed that the deceased had sustained extremely severe injuries. The left hand had been chopped off at the wrist, there was a cut wound on the left chest measuring 6 cm by 4 cm, and multiple deep cut wounds on the head. The examination further revealed a penetrating chest injury leading to haemothorax and a linear skull fracture on the left temporal bone of the head resulting in intracranial bleeding. The doctor formed the opinion that the cause of death was haemorrhagic shock due to multiple cut wounds.
7. PW2, PC Erick Langat, the investigating officer, testified that he visited the scene and found the body of the deceased beside a motorcycle with severe injuries including deep cuts on the head and a severed hand. He recorded witness statements and later arrested the accused persons. He confirmed that he did not witness the attack and relied on statements of witnesses.
8. At the close of the prosecution case, only the defence filed written submissions dated 13<sup>th</sup> March 2026, while the prosecution did not file any submissions. Learned counsel for the accused persons submitted that the prosecution had failed to establish any nexus between the accused persons and the commission of the offence. Counsel relied on the testimonies of PW1, PW3, PW5 and PW6, all of whom either attributed the attack to other named individuals or expressly stated that they did not see the accused persons assault the deceased.
9. It was further submitted that the prosecution case was inconsistent and largely based on hearsay, and that crucial gaps existed in the investigations, including failure to charge other persons mentioned by witnesses and failure to produce the alleged murder weapons.
10. Relying on *Ramanlal Trambaklal Bhatt v Republic* [1957] EA 332, counsel contended that the evidence adduced fell far below the threshold of a prima facie case and urged the court to acquit the accused persons under section 306(1) of the [Criminal Procedure Code](#).
14. A prima facie case 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. (See [Anthony Njue Njeru v Republic](#) [2006] eKLR).
14. From the evidence on record, it is not in dispute that the deceased died, and that his death was caused by unlawful acts. The medical evidence clearly establishes both the fact of death and the cause thereof, and further points to a brutal attack consistent with malice aforethought.
14. The critical question, however, is whether there is any evidence linking the accused persons to that unlawful act.
14. A careful analysis of the prosecution evidence reveals that none of the witnesses identified either of the accused persons as having inflicted the fatal injuries upon the deceased. PW1 attributed the attack to one Edwin Nyangena. PW5 named other individuals and expressly exonerated the accused persons. PW3 and PW6 did not witness the attack at all.
14. In those circumstances, the prosecution evidence does not place the accused persons at the scene as perpetrators, nor does it establish any nexus between them and the commission of the offence. Applying the test for a prima facie case, even if the accused persons were to elect to remain silent, the



evidence on record would not sustain a conviction. I therefore find that the prosecution has failed to establish a prima facie case against either of the accused persons.

22. Accordingly, under section 306(1) of the *Criminal Procedure Code*, the accused persons, John Mayenga Zakaria and James Onduso Mose, are hereby acquitted of the charge of murder. The accused persons shall be set at liberty forthwith unless otherwise lawfully held.

**DELIVERED AT NYAMIRA THIS 19<sup>TH</sup> DAY OF MARCH 2026.**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Anita

1<sup>st</sup> Accused - Present

2<sup>nd</sup> Accused - Present

For Accused persons - Mr. Mongáre Advocate

For the DPP - Mr. Chirchir (SADPP)

