

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL CASE NO. E015 OF 2024

REPUBLIC.....

PROSECUTION
VERSUS

HILLARY ISANYA.....**ACCUSED**

RULING

1. The accused person, Hillary Isanya, is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars allege that on the night of 3rd April 2024 at Mukulusu Village in Kakamega County, he murdered Anna Mukwambo.
2. The prosecution has called several witnesses in support of its case. At the close of the prosecution’s case, this Court is called upon to determine whether a prima facie case has been established against the accused sufficient to require him to be placed on his defence under section 306(2) of the Criminal Procedure Code.

Analysis.

3. The test for determining whether there is a case to answer was set out in **Bhatt v Republic [1957] EA 332**, where the Court held that:

‘A prima facie case is 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.’

4. The principle was reiterated **in Ramanlal Trambaklal Bhatt v Republic**, *where the court emphasized that the burden of the prosecution at this stage is not to prove the case beyond reasonable doubt but to establish a prima facie case. However a mere scintilla of evidence or evidence that is manifestly weak or discredited cannot suffice.*
5. The court must therefore carefully consider whether the prosecution evidence rises above suspicion to establish a legally sustainable case requiring an answer.
6. To establish the offence of murder under section 203 of the Penal Code, the prosecution must prove:
 - I. The fact and cause of death of the deceased
 - II. That the death was caused by an unlawful act or omission
 - III. That the accused committed the unlawful act (actus reus)
 - IV. the accused acted with malice aforethought

Fact and Cause of Death

7. The death of the deceased, Anna Mukwambo, is not in dispute. PW1, PW2, and PW3 all testified to seeing the deceased shortly before or after her death. PW5, the pathologist, confirmed through a post-mortem report that the cause of death was external blood loss secondary to sharp force trauma following assault.

8. This element is therefore sufficiently established.

Unlawful Act

9. The evidence shows that the deceased sustained a deep cut wound to the neck while asleep in her house. PW6 (the investigating officer) established that entry into the house was gained by digging through a mud wall and accessing the house through a window.

10. This clearly points to a violent and unlawful attack.

Whether the Accused was Linked to the Offence

11. The prosecution case against the accused is purely circumstantial, based on recovery of plastic shoes at the scene, alleged identification of the shoes as belonging to the accused and the evidence that the accused had been seen earlier at the homestead

12. There is no direct eyewitness linking the accused to the attack.

13. The law on circumstantial evidence was set out in **Sawe v Republic [2003] KLR 364**, where the Court held:

'circumstantial evidence must be such that it points irresistibly to the accused and excludes any other reasonable hypothesis except that of guilt.'

14. Further, in **Abanga alias Onyango v Republic Cr. App No. 32 of 1990**, the Court outlined that:

a) The circumstances from which the inference of guilt is drawn must be firmly established

b) Those circumstances must point unerringly to the accused

c) The circumstances must form a complete chain leaving no escape from the conclusion that the crime was committed by the accused

15. In the present case the possibility that another person committed the offence has not been excluded. At this stage, however, the Court is not required to make final findings but only to determine whether the evidence, if unchallenged, could support a conviction.

Malice Aforethought

16. The nature of the injury (a deep cut to the neck) suggests intention to cause death or grievous harm.

17. Under section 206 of the Penal Code, malice aforethought may be inferred from:

- The nature of the weapon used.
- The part of the body targeted.
- The severity of the injury.

18. A cut to the neck is prima facie evidence of malice aforethought.

Determination

19. The key question is whether the circumstantial evidence presented reaches the threshold of a prima facie case.
20. Although the evidence is mostly circumstantial there is some evidence placing the accused in proximity to the scene and connecting him through the recovered shoes.
21. At this stage, the Court must avoid making definitive conclusions on credibility or sufficiency beyond the prima facie threshold.
22. **In Republic v Jagjivan M. Patel & Others [1961] EA 539,**
the Court held that:

'a case to answer exists where there is evidence upon which a reasonable tribunal might convict.'

Conclusion

23. Taking the totality of the evidence on record, this Court finds that the prosecution has established a prima facie case against the accused person sufficient to require him to be put on his defence.

Orders

- a. The accused, Hillary Isanya, is hereby found to have a case to answer.
- b. He is placed on his defence under section 306(2) of the Criminal Procedure Code.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30TH DAY OF APRIL, 2026.

S.N MBUNGI

JUDGE

In the presence of:-

CA: Angog'a/Velma