



**Republic v Njeka & 3 others (Criminal Case E013 of 2023)
[2026] KEHC 6192 (KLR) (11 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6192 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E013 OF 2023
RN NYAKUNDI, J
MAY 11, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

DICKSON MUNALA NJEKA 1ST ACCUSED

SYPROSE CHRISTINE OMONDI 2ND ACCUSED

IBRA AMOS 3RD ACCUSED

ZABLON BULILO 4TH ACCUSED

RULING

1. The Accused persons herein were charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence were that Dickson Munala Njeka, Syprose Christine Omondi, Ibra Amos and Zablon Bulilo alias Aguti on the 3rd day of July 2023 at Ebuyalu Village, Embali Sub-location, Ipali location in Emuhaya Sub-County within Vihiga County, jointly with others not before court murdered Ibrahim Ondeko.
2. The plea of not guilty was entered against each of the Accused persons. The lead prosecution counsel in these proceedings was Mr. Leina for the state whereas the 1st and 4th Accused persons were under the representation of Learned counsel Mr. Lugadiru and M/s Rabote respectively.
3. This matter was partly heard by Kamau J. Nolle prosequi was entered against the 2nd Accused herein Syprose Christine Omondi and the 3rd Accused person herein Ibra Amos on 10th July 2024 according to Section 82(1) of the Criminal Procedure Code Cap 75 Laws of Kenya. The Prosecution, thus, treated them as its witnesses. The matter herein, therefore, proceeded for trial as against the 1st and 4th Accused persons only.



4. The prosecution marshalled 7 witnesses who gave evidence to establish the ingredients of the offence of murder contrary to section 203 as read with section 204 of the Penal code.

Prosecution Case Summary

5. PW1 - Cynthia Chepkorir Kiplagat, testified that she was a 23-year-old student from Kitale and that the deceased, Ibrahim Ondeko, was her friend and they had planned to live together. She testified that on 3rd July 2023 between 7.00 p.m. and 8.00 p.m., she was at the deceased's shop at Ebuyangu. The deceased had briefly gone to his home at Esibuye and later returned, after which they talked and continued selling goods until about 8.00 p.m. when they closed the shop and proceeded to prepare dinner in the house situated behind the shop. PW1 testified that while it was raining heavily, they heard the door being pushed open and two thieves entered the house. She stated that the electricity lights were on and the attackers ordered them to keep quiet or they would "finish" them. PW1 testified that one attacker cut her with a panga on her left hand while the other assaulted her using rungus. She stated that the attackers had worn marvins and jackets and that she did not know them. She further testified that the deceased was on the bed as she quickly opened the shop door and escaped towards a maize plantation while the attackers turned to the deceased. PW1 further testified that she later proceeded to the deceased's brother Patrick's shop at Ebuyangu but did not get him despite knocking. She stated that she found a police vehicle outside the shop and informed the driver that they had been attacked, whereupon they proceeded to the police station before returning with police officers to the deceased's shop. PW1 testified that upon entering the shop, the police found the deceased already killed and lying outside the house, with clothes scattered all over. She stated that the attackers had stolen sugar, rice and bags containing clothes. She further testified that the deceased's family members, including Patrick and his wife, later arrived at the scene together with DCI officers, after which the deceased's body was taken to hospital. PW1 stated that neighbours later informed Patrick that some clothes belonging to her, the deceased and a child had been recovered from a shamba. She also testified that the deceased's Samsung phone and M-pesa phone were later recovered from other people, although she did not know from whom they were recovered. PW1 identified the Samsung phone shown to her in court as the deceased's phone marked "MFI-1" and confirmed that she later recorded her statement with the police.
6. PW2 - Patrick Khamati Abnery, testified that he was a businessman operating a shop at Esibuye and that the deceased, Ibrahim Ondeko, was his younger brother. He testified that on 3rd July 2023 at about 8.30 p.m., while at his shop at Eshibinga, his wife Shamilla Lijodi called and informed him that his brother Ibrahim had been attacked at the area known as "Kwa Chief" where he operated his business. PW2 testified that he immediately closed his shop, drove to the scene and upon arrival found that the deceased had already died. He stated that the deceased was lying outside the house near the maize plantation and had sustained cuts on the shoulder, cheeks and forehead and was bleeding uncontrollably. He further testified that police officers from Mbale had already arrived at the scene and that he informed both his mother and father about the incident. PW2 stated that after his parents arrived, the police removed the body of the deceased and took it to Coptic Mortuary. He also testified that he found the deceased's wife Cynthia crying and injured, having sustained a cut on her left hand, and that they later took her to Coptic Hospital before proceeding to Emuhaya Police Station the following day to record statements. PW2 further testified that police investigations later led to the arrest of several suspects found in possession of the deceased's phone, which was blue in colour. He stated that he did not personally see the suspects but confirmed that the stolen items included a suitcase containing clothes, a woofer, money from the day's business proceeds and the deceased's Mpesa phone. He testified that according to Cynthia, the attackers had also stolen goods from the shop. PW2 identified the blue Samsung phone shown to him in court as the deceased's phone, which



- was marked as “MFI”. He finally testified that the severe cuts inflicted on the deceased caused excessive bleeding which, in his view, led to the deceased’s death.
7. PW3 - Ibrahim Amos testified that he was, a casual labourer from Dudi in Kakamega County. He stated that he did not know the deceased, Ibrahim Ondego, but came to know Dickson Munala Njeka and Zablon Bulilo after being implicated in a scandal relating to a Safaricom line. PW3 testified that on 6th September 2023 at about 3.00 p.m., police officers went to his home and asked him to surrender a Safaricom line which had been registered in his name. He informed the police that he did not have the line and led them to Syprose Christine at Yala, who was in possession of it. He testified that the police arrested both him and Syprose Christine and took them to Emuhaya Police Station where they were initially remanded before later being released to become witnesses. PW3 confirmed that the Safaricom line sought by the police was found with Syprose Christine.
 8. PW4 - Syprose Christine Omondi testified that she was from Yala and that she knew Dickson Munala Njeka as her customer, Zablon Bulilo because of the case and Ibra Amos as her boyfriend. She testified that on 6th September 2023 while selling chips and bhajia at Yala, police officers arrived, arrested her and took her together with Ibra Amos to Dudi Police Station. PW4 testified that the police questioned her about a phone and she informed them that she had bought the Samsung phone at Yala from Dickson Munala Njeka. She then led the police to Dickson Munala Njeka’s shop where he was arrested before they were all taken to Emuhaya Police Station. PW4 further testified that the police recovered the phone which Dickson Munala Njeka had sold to her and identified the Samsung phone with a blue cover marked as MFI 1 as the phone she had purchased.
 9. PW5 – Dr. Dixon Mchana testified that he was the pathologist who conducted the post mortem to the body of the deceased. PW5 testified with the following findings on the body of the deceased: Upper airway looks normal, there is massive haemo-pneumothorax in the right pleural space with a compound fracture and on the head there was a deep cut wounds on the forehead and right cheek with compound fractures of the skull and right zygomatic bone. PW5 formed the opinion that the cause of death was a deep cut wound on the right shoulder with massive hemo-pneumothorax of the right pleural space. PW4 produced the Post Mortem Report dated 13th July 2023 as PEXh 2.
 10. PW6 - No. 59986 CPL Thomas Bii testified that he was a police officer attached to DCI Emuhaya performing general investigation duties. He testified that on 3rd July 2023 at about 8.00 p.m., while at his residence, he received a call from IP Kioko informing him of an incident at Duka Moja along Ebuyangu-Luanda Road within Ebuyala village. PW6 testified that he proceeded to the scene together with PC Cheruiyot and found police officers from Embali Police Station and members of the public already present. He stated that they found the deceased Ibrahim Ondeko lying down bleeding with serious injuries on the cheek, forehead and a deep cut on the right shoulder, while his wife Cynthia Jekorir had sustained a cut on her left arm below the elbow. PW6 further testified that Cynthia informed them that after closing the business and while seated in the sitting room behind the shop, three men armed with pangas forced their way into the room and warned them not to scream. He testified that the attackers assaulted them using pangas, forcing Cynthia to escape through the front door with injuries on her left hand while the deceased remained behind and was fatally attacked as he attempted to escape through the rear door. PW6 stated that the attackers stole rice, sugar, clothes, two mobile phones and an unknown amount of money before fleeing. He testified that the body was removed to Coptic Hospital Mortuary while Cynthia was escorted for treatment. PW6 further testified that on 6th September 2023, together with CI Jacob Mongare and other officers, they traced Ibra Amos, who led them to Syprose Christine found in possession of the stolen phone and later to Dickson Munala Njeka from whom the phone had allegedly been bought. He testified that the suspects



were arrested, investigations completed and the file forwarded to the Director of Public Prosecutions who recommended that the suspects be charged before the court.

11. The next witness to be summoned by the prosecution was one PW7 – No 239980 Inspector Edgah Kibet. According to his evidence, his main role was after the fact of the crime when he was asked by the investigating officer PW6 that there are suspects who had been arrested and been on the investigation radar with regard to the offence of murder contrary to section 203 of the Penal Code jointly with others not before court murdered Ibrahim Ondeko. In the testimony of PW7, on the receipt of the circumstances of the investigation, it was felt necessary by PW7 to conduct an identification parade with an objective of positive identification of the suspects so that they can be placed at the scene of the crime. It was the testimony of PW7 that he made arrangements for availability of the members of the parade who numbered 8 whereas the suspects were kept in a secure private room so that the parade is temper proof in the first instance. One Zablun Buliro, the 4th Accused was place in the parade of 8 members with basically similar physical features with the suspects. According to PW7, the suspect was invited from his private room, duly secured to go to the parade location so that the witness Dickson Munala could go through and identify the suspect allegedly mentioned in his statement as one of the persons who were involved in the commission of the crime. The Witness who is also a police inspector detective informed the court that the suspect was placed between No 3 and 5; no 2 and 4; 1 and 3 and 4 and 6 and the witness was able to positively identify the suspect by touching him and gave some description of his appearance as the characteristics which supported his identification. The identification parade form was then prepared and formed part of the trial bundle in support of the prosecution case and admitted so as PEXh 3.

Analysis and Determination

12. Having carefully considered the evidence tendered by the prosecution, the witness testimonies, the exhibits produced and the submissions by the learned prosecution counsel, the issue for determination at this stage is;

Whether the prosecution has established a prima facie case against the accused persons

13. The Court at this stage is not required to make a definitive finding on the guilt or innocence of the accused persons, but only to determine whether there is evidence which, if left uncontroverted, could lead a reasonable tribunal properly directing itself to convict. Then, the question for this court to answer is whether under Section 306 of the Criminal Procedure Code, the prosecution has discharged the burden of proof to meet the threshold of a prima facie case for the accused person to be place on his defence. First and foremost, Article 50(2)(a) states as follows: -

“Every accused person has a right to a fair trial which includes the right to be presumed innocent until the contrary is proved.”

14. The prima facie obligation is vested with the prosecution. The success or failure of it depends wholly on the evidence presented to prove existence or non-existence of a fact or facts in issue as derived in Section 107(1), 108 and 109 of the *Evidence Act*. The term Prima facie is note defined under Section 306 of the Criminal Procedure Code but the concept appears both in criminal and civil law. There is a close knitted correlation between the term prima facie as commonly used and prima facie evidence. In so far as the definition is concerned, as deducible in Section 306 of the CPC, the use of prima facie case means the prosecution having presented enough evidence to proof the elements of the offence in question.



15. The prosecution is entitled to prevail in its case against the accused person. Speaking plainly, there are two senses in which courts use the concept of prima facie. The first in the sense of the prosecution producing sufficient evidence to render a reasonable conclusion in favour of the allegation asserted in the indictment or the charge sheet. That this what gives the trial court the power to exercise discretion to allow the criminal case to proceed to the next stage which is the defence offering an explanation or an answer to the charge.
16. In the second meaning of the concept, a prima facie case denotes a situation where the prosecution has adduced sufficient evidence capable of persuading a properly constituted court or tribunal that the accused person ought to be called upon to answer the case against him. Such evidence is considered adequate that, if the accused person chooses to remain silent or fails to rebut it, the court may lawfully find him guilty and enter a conviction. Nonetheless, *the Constitution* does not impose any obligation upon the accused person to testify or tender evidence in response. Under Article 50(2)(f) of *the Constitution*, an accused person has the right to remain silent and not testify during the proceedings, while Article 50(2)(i) guarantees the right against self-incrimination. However, where the accused elects to exercise these constitutional rights, he does so with the understanding that the un rebutted prosecution evidence may result in an adverse finding against him.
17. It is well established in criminal law that once the prosecution establishes a prima facie case, the evidential burden shifts to the accused person to respond to the allegations raised. Even so, this does not in any way transfer the legal burden of proof from the prosecution. The duty of proving the guilt of the accused person beyond reasonable doubt remains with the prosecution throughout the trial, consistent with Article 50(2)(a) of *the Constitution*, which guarantees the presumption of innocence until proven guilty. I presume that is what the drafters of *the constitution* had in mind when the rights centered around Art 50(2)(a), (j) and (i) of the same constitution. In Republic Vs Abdi Ibrahim Owl [2013] eKLR a prima facie case was defined as follows: -

“Prima facie” is a Latin word defined by Black’s Law Dictionary, 8th Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “Prima facie case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with.”
18. At the close of the prosecution case, this Court is guided by the case of Anthony Ndegwa Ngari Vs Republic (2014) eKLR for the case of murder, the republic is supposed to prove each of the following ingredients beyond reasonable doubt: -
 - a. The fact of death
 - b. The fact that the deceased’s death was caused by an unlawful act or omission.
 - c. That the accused committed the unlawful act which caused the death of the deceased; and
 - d. That the accused had malice aforethought.
19. At the prima facie stage, the court determines whether a reasonable tribunal, properly directing itself on the law and evidence, could convict if the prosecution evidence remained uncontroverted. The court is therefore required to review the evidence and determine whether the prosecution has established a prima facie case sufficient to warrant the accused being placed on his defence. This is guided by the constitutional principle that every accused person is presumed innocent until proved guilty beyond reasonable doubt under Article 50 of *the Constitution*. Accordingly, the court must make a judicial



determination on the legal sufficiency of the prosecution's case at the close of the prosecution case before calling upon the accused to enter his defence.

20. Having carefully considered the evidence adduced by the prosecution witnesses, this Court is satisfied that the fact and cause of death of the deceased Ibrahim Ondeko has been established. PW1 and PW6 testified that the deceased was violently attacked by armed assailants at his residence and shop at Ebuyangu on the night of 3rd July 2023, while PW2 found the deceased already dead with severe cut wounds on the shoulder, cheeks and forehead. The medical evidence by PW5, the pathologist, confirmed that the deceased sustained deep cut wounds and massive haemopneumothorax leading to death. The evidence on record therefore establishes that the deceased died as a result of unlawful acts inflicted by other persons.
21. Further, the prosecution placed before the Court evidence linking the accused persons to the offence through the doctrine of recent possession and identification evidence. PW1 testified that the attackers stole, among other items, the deceased's Samsung phone and Mpesa phone. PW3 and PW4 testified on how the stolen Samsung phone traced through a Safaricom line registered in the name of PW3 was recovered from PW4, who stated that she had purchased it from Dickson Munala Njeka. PW6, the investigating officer, confirmed the tracing and recovery of the stolen phone and the subsequent arrest of the suspects. In addition, PW7 conducted an identification parade in which the witness positively identified one of the suspects, Zablou Buliro, by touching him and describing his physical appearance. At this stage, the Court is not required to make definitive findings on credibility or guilt, but only to determine whether a prima facie case has been established.
22. In the circumstances, this Court finds that the prosecution has adduced sufficient evidence which, if left unanswered, may justify a conviction against the accused persons for the offence of murder contrary to section 203 as read with section 204 of the Penal Code.
23. Consequently, this Court finds that the 1st and 4th accused persons have a case to answer and they are hereby placed on their defence pursuant to Section 306(2) of the Criminal Procedure Code. The defence hearing shall be on 18th May 2026. It is so ordered.

DATED, SIGNED AND DELIVERED AT VIHIGA THIS 11TH DAY OF MAY 2026

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R. NYAKUNDI

JUDGE

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