

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT VIHIGA**  
**CRIMINAL CASE NO. E004 OF 2026**

**REPUBLIC**

.....**PROSECUTION**

**VERSUS**

**JACKSON SHIKANGA LUVAKA.....1<sup>ST</sup>**

**ACCUSED**

**SAMUEL MULAMA SHIKANGA.....2<sup>ND</sup>**

**ACCUSED**

**Coram: Before Justice R. Nyakundi**  
**M/s Leina for the state**  
**Mr. Wekesa Advocate for the Accused**

**RULING**

1. The accused persons 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 are that the accused persons on the 8<sup>th</sup> day of January 2026 at unknown time at Kipchekwen Village, Banja location in Hamisi Sub-County within Vihiga County jointly murdered Derrick Andambi Luvaka.
2. The lead prosecution counsel in these proceedings was Mrs. Leina for the state whereas the Accused persons were under the representation of Learned counsel Mr. Wekesa.
3. This case was based on the following brief facts that on 8<sup>th</sup> January 2026, the deceased Derrick Andambi Luvaka went to the home of 1<sup>st</sup> Accused Jackson Shikanga and found his wife Pamela winnowing maize. At the time, the 1<sup>st</sup> Accused was not at home and the deceased borrowed maize from Pamela in which she refused and alleged that the deceased had stolen maize while still in the shamba and that this habit was rampant.

The deceased insisted but Pamela called her son Samuel Mulama Shikanga, the second accused who intervened and told the deceased to go away. The deceased insisted that he wanted maize and that is when the 1<sup>st</sup> Accused was called and upon his arrival, the quarrel escalated and the deceased was assaulted by the accused persons who cut his hands using a jembe and slasher inflicting serious injuries to him.

4. The prosecution marshalled 6 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.

### **Summary for the Prosecution case.**

5. **PW1 Edith Khavere** testified that she was a 57-year-old farmer and widow who was informed on 8<sup>th</sup> January 2026 that her son, Derrick Andambi had been attacked and assaulted. PW1 testified that she discovered her son lying beside the road near the Banja MCA's home where he identified his assailants as Jackson, Jackson's wife Pamela and their son Sammy, who had cut him using a jembe and a slasher. She added that after reporting the incident to Serem Police Station, the police transported the victim to Vihiga County Teaching and Referral Hospital, where he was admitted with cuts on both hands at the wrists, head and right eye. PW1 further testified that the deceased passed on at the theatre on 10<sup>th</sup> January 2026 and she later observed a pool of blood and suspected weapons at her house, while also discovering that a radio and hooper had been stolen from the residence. She testified that she subsequently recorded a statement with the DCI and witnessed a post-mortem on 24<sup>th</sup> January 2026, which determined the cause of death was excessive bleeding due to external assault by a sharp object.
6. **PW2 Jackline Shivuluka** testified that on 8<sup>th</sup> January 2026, while at her place of work, she received a call from a neighbour informing her that her brother Derrick Andambi was being beaten and that smoke was

emanating from their house, indicating he might have been set ablaze. She instructed her mother to investigate, who later confirmed that the deceased had been admitted to Vihiga County Referral Hospital with both hands cut. She testified that although the hospital required Social Health Authority (SHA) insurance or cash for treatment which the deceased lacked, she spoke to him and successfully urged him to accept the amputation of his hands as per the doctor's suggestion. It was her testimony that on 10<sup>th</sup> January 2026, she received notification of his death and his body was preserved in the morgue at the same facility. She further testified that before his demise, the deceased informed his mother that he had been beaten by his step-brother Jackson, his son Samwel and his wife Pamela.

7. **PW3 Hesbon Imoli** testified that he was a Luhya male adult and a resident of the mentioned place employed by Aquamist Company in Nairobi. He recalled that on the 24<sup>th</sup> day of January 2026 at approximately 1550pm, he attended and witnessed a post-mortem conducted on the body of his late brother, Derrick Andambi Luvaka, which was performed at the Vihiga County Referral hospital morgue by a pathologist. He stated that he agreed with the opinion of the pathologist regarding the cause of death of his late brother and confirmed that he had no complain about it.
8. **PW4 No. 124296 PC (W) Margaret Wachira** testified that on the 8<sup>th</sup> day of January 2026 at approximately 1505hrs, she and Sgt Omodia were informed by the Deputy OCS through IP Kibet of a serious assault at Kabinjari. Serving as the crime aid of the day, she joined Sgt Omodia and proceeded to the scene in m/v GKB 272 T driven by Cpl Shoka. She testified that upon arrival, they discovered Derrick Andambi (now deceased) in a supine position with serious injuries, specifically deep cuts on both wrists, his right leg and his ring and middle toes, which had reportedly occurred at around 1200hrs. it was her testimony that the deceased stated to her that he had been cut with a jembe by his brother,

Jackson and his son Samwel after he questioned Samwel regarding the theft of his maize. It was PW4's testimony that the scene was photographed and documented before the officers escorted the victim to the hospital with his mother; however, he later passed away while hospitalized in serious condition.

9. Next in line to give evidence for the prosecution was **PW5 - Dr. Clinto Kigweyi** whose role was to carry out a post mortem examination on the body of the deceased which he relied upon to give evidence before this Court duly dated 24<sup>th</sup> January 2026. According to PW5, his positive findings were as follows: pale chest within the respiratory system, bleeding from the cardiovascular system; in the spinal cord, contracted spine. PW5 formed the opinion that the cause of death was hemorrhage shock following excessive bleeding after assault with a sharp object. PW5 produced the port mortem report as PExh1.
10. **PW6 No. 101057 PC (W) Christabel Omumalia** testified that she was attached to DCI Hamisi and performing crime investigation duties when she was approached by Edith Khavere on 16<sup>th</sup> January 2026 regarding the murder of her son, Derrick Andambi Luvaka. She testified that Edith had previously reported the case at Serem police station under OB 13 on 11/01/2026. She stated that on 8<sup>th</sup> January 2026, Edith found the deceased lying beside the road near the Banja MCA's home, where he identified his attackers as E 1, E 2, and Pamela (E 1's wife), who had assaulted him with a jembe and a slasher. Derrick was transported by police vehicle to Vihiga County Teaching and Referral hospital at Mbale, where he succumbed to his injuries on 10/01/2026 while in the theatre for amputation of his hands, head, and right eye. Edith suspected the incident occurred at her house due to blood stains found there and noted a history of threats against the deceased by E 1. The witness further testified that a post-mortem conducted by Dr. Clinton on 24/01/2026 concluded the cause of death was HAEMRRHAGE SHOCK FOLLOWING

EXCESSIVE BLEEDING AFTER ASSAULT WITH SHARP OBJECT. It was her testimony that E 1 and E 2 were arrested on 27/01/2026 and although the witness visited and photographed the scene, noting dried blood, she was unable to recover the murder weapons.

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## **Prosecution Submissions Summary**

11. The learned prosecution counsel M/s Leinah submitted that the accused persons, Jackson Shikanga Luvaka and Samuel Mulama Shikanga, were charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code, following an incident on 8<sup>th</sup> January 2026 where they jointly murdered Derrick Andambi Luvaka. It was submitted that the deceased was assaulted with a jembe and slasher after a dispute regarding maize at the 1<sup>st</sup> Accused's home, leading to serious injuries from which he later succumbed. The learned prosecution counsel submitted that the prosecution bore the burden of proof to establish the four essential ingredients of murder: the death of a human being, that the death was unlawfully caused, that there was malice aforethought, and that the accused were the persons who killed the deceased.
12. The learned prosecution counsel submitted that the first ingredient was proved by the testimony of Dr. Collins (PW5) and the post-mortem report, which indicated the cause of death was hemorrhagic shock following excessive bleeding after an assault with a sharp object. Regarding the second and third ingredients, the learned prosecution counsel submitted that the unlawful act and malice aforethought were demonstrated through the brutal manner of the assault and the nature of the injuries inflicted, citing various legal precedents such as *Rex v Tubere S/o Ochen* to show that intent can be inferred from the weapon used and the part of the body injured.

13. Furthermore, the learned prosecution counsel submitted that the accused persons acted with common intention under Section 21 of the Penal Code and were placed at the scene of the crime through the evidence of a dying declaration. It was submitted that the deceased, prior to his death, identified the accused persons as his assailants to witnesses PW1 and PW2, and that such declarations are admissible as the deceased is presumed to be telling the truth in extremity. Consequently, the learned prosecution counsel submitted that a prima facie case had been established and prayed that the court find the accused persons have a case to answer and be put on their defence pursuant to section 211 (1) of the Criminal Procedure Code.

### **Analysis and Determination**

14. 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**

15. At this stage, the Court 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 placed 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.”*

16. 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 not 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 prove the elements of the offence in question. That 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.
17. 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 unrebutted prosecution evidence may result in an adverse finding against him.

18. 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 centred 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, 8<sup>th</sup> 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. In **Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335**, the court stated as follows: -*

*“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction.” This is*

*perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence”. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence...It is may not be easy to define what is meant by a “prima facie case”, but at least it 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.”*

19. At the close of the prosecution case, the dicta in 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.*

20. At a prima facie stage, the court asks the question whether a reasonable tribunal or judge in a bench trial crediting the prosecution testimony and drawing all rational inference in the prosecution’s favour could find every element of the offence of murder proved beyond reasonable doubt. The court has to test the sufficiency of the evidence by reviewing it and this is essentially to address the issue whether the prosecution’s case is that which has met the threshold of a prima facie case or is one which is so lacking that it should not be allowed to proceed to the defence stage. The

Constitution requires proof of guilty beyond reasonable doubt. As a consequence, the constitutionally required standard is founded under the right of presumption of innocence until the contrary is proved. The due process clauses in Article 50 of the constitution requires that each element of a crime be proved beyond reasonable doubt. It is a requirement of the law for the court not to reserve a ruling of a prima facie case at the close of the prosecution case. The judge must make a judicial determination of the legal sufficiency of the prosecution's case before asking the accused to put in a defence.

21. In the case of **R Vs Galbraith (1981) 1 WLR 1039**, the court laid down the test which must apply in answering the issues around prima facie case and a submission of no case to answer thus: -

*“The difficulty (for the court) arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness, or because it is inconsistent with other evidence -*

- a. *Where the judge comes to the conclusion that the prosecution's evidence taken at its height, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.*
- b. *Where however the prosecution evidence is such that its strengths or weaknesses depend on the view to be taken of a witness' reliability, or other matters which are generally within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, the then judges should allow the matter to be tried by the jury but for our case, is for the case to proceed further to the defence to offer evidence in rebuttal or elect to keep quiet. (emphasis mine).”*

22. How does the court make a finding on a prima facie case? It is to look at the proofs of evidence attached to the six (6) witnesses and the information as drafted by the prosecution in totality as against the accused person. The fact and cause of death of the deceased, Derrick Andambi Luvaka, were sufficiently established through the testimonies of PW1, PW2, PW4, PW5 and PW6. PW5, the pathologist, confirmed through the post-mortem report that the cause of death was hemorrhagic shock following excessive bleeding after assault with a sharp object. The prosecution also adduced evidence that the deceased sustained deep cuts on both wrists and other parts of the body. Further, the evidence of PW1, PW2, PW4 and PW6 consistently showed that before his death, the deceased identified the accused persons, namely Jackson Shikanga Luvaka and Samuel Mulama Shikanga, as among the persons who assaulted him using a jembe and slasher. The Court notes that the prosecution relied substantially on the deceased's dying declaration, which at this stage is admissible evidence and places the accused persons at the scene of the offence.
23. The evidence on record further discloses that the assault arose following a dispute over maize at the home of the 1st accused and that the injuries inflicted were severe and targeted at vulnerable parts of the body. The nature of the weapons allegedly used, namely a jembe and slasher, coupled with the seriousness of the injuries sustained, are matters from which malice aforethought may be inferred within the meaning of section 206 of the Penal Code. Additionally, the evidence as presented by the prosecution raises the issue of common intention under section 21 of the Penal Code, as the accused persons are alleged to have jointly participated in the assault leading to the deceased's death.
24. Accordingly, this Court is satisfied that the prosecution has established a prima facie case against the accused persons. Consequently, the accused persons are hereby found to have a case to answer and are placed on

their defence pursuant to section 306(2) of the Criminal Procedure Code.  
The defence hearing shall be on **18<sup>th</sup> May 2026**.

25. It is so ordered.

**DATED, SIGNED AND DELIVERED AT VIHIGA THIS 11<sup>TH</sup> DAY OF MAY  
2026**

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**R. NYAKUNDI  
JUDGE**