

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE NO. E025 OF 2025

REPUBLIC
DPP

=VERSUS=

ABDALA YAHYA ACCUSED

Coram: Justice R. Nyakundi
Ms Kirenge for State

RULING

1. The Accused in this case was arraigned before this Court on a charge of information filed on 29th December 2025 which states as follows regarding the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

Particulars of the Offence

2. Abdala Yahya on the 15th day of December, 2025 at Kipsamo Location, in Kesses Sub-County within Uasin Gishu County in the Republic of Kenya murdered Abel Kipkemboi.
3. The Accused person who was represented by Ms Moronge Advocate, pleaded not guilty to the offence necessitating the Prosecution to summon witnesses who had recorded statements with Investigating Officer so that they can facilitate to discharge the burden of proof as stipulated in Section 107(1), 108, 109 & 112 of the Evidence Act. The standard and burden of proof is that of beyond reasonable doubt. The lead Prosecution Counsel was one Ms Kirenge.

Summary of the evidence by the Prosecution

4. The PW1 Maureen Chelimo aged 19 years and a resident of Kipsamo told the Court that one Abdala was her boyfriend and that on 15th December 2025 she was leaving his house on or about 12p.m. Thereafter they arrived at the shop where they were given some

mangoes which they cut with a knife and sat down to enjoy the fruits. That is the time when Abel the deceased arrived and joined them but simultaneously held her like an attempt to hug her. According to PW1 she was not happy about the gesture of being held by Abel the deceased and the same wrath or anger came also from his boyfriend one Abdala that the action constituted an indecent touch. In the evidence of PW1, this led to some conflict between Abel the deceased and his boyfriend Abdala. This went on for a while including Abel the deceased telling Abdala to go and look for girls within their village and locality. That is when Abdala drew a knife which was used to cut the mangoes and stabbed Abel the deceased inflicting physical injuries. She was scared and therefore ran away from the scene while screaming and coming in contact with her friend Hellen raising an alarm as they were not able to come to terms with the fact that Abel the deceased had sustained fatal injuries.

5. The next witness in line of the Prosecution case was Victor Kibet – PW2 who informed the Court that he knew the Accused and also the deceased. He therefore recalled that on that fateful day 15th December 2025 he was with the deceased on the road and soon thereafter they entered in the shop of one Everlyne Biwott. There was some exchange of greetings as PW1 and the Accused were eating mangoes which they had bought from that shop. That is when he saw Abel hug PW1 and immediately thereafter Abdala the Accused appeared to respond with rage that the deceased had no respect for his girlfriend. It did not take long before he could observe blood streams flowing from the body of the deceased through his shirt which was sufficient evidence that he had suffered physical injuries. What followed according to PW2 was for each of them to scream and to seek assistance of trying to get the victim to a medical facility to see whether they could save his life. In the evidence of PW2 he was emphatic that one Abdala was the one who

picked the knife which was on a seat in the shop and used it to stab the deceased at the back.

6. In pursuit of proving the case against the accused person the Prosecution summoned the evidence of PW3 one Emmanuel Kibiwott who told the Court that he operates a shop within the centre of Kesses and in the course of him serving various customers the Accused and the deceased also joined in ordering mangoes which were part of the products he was selling. The witness further acknowledged that PW1 was his cousin whereas Abel the deceased was their neighbor and a customer. This social kind of gathering which involved his cousin PW1, Abel the neighbor and also Abdala whom he knew took sometimes enjoying the flavor of the mangoes as they used his own knife to peel the mangoes sharing it amongst themselves. The witness also recalled that he was seated in company of the Accused Abdala and PW1. However, in the course of that a customer came in and was in need of mangoes. He entered inside to pick the said mangoes according to the need of that customer. According to PW3 while he was inside the shop he could hear a quarrel outside the shop which turned into a serious conflict and in a short time one Hellen instructed him to step out of the shop and he responded by closing the shop. That is when he came face to face that Abel the deceased had been stabbed and blood was streaming out of his body. They raised an alarm and in hot pursuit the culprit Abdala was arrested and escorted to the police station for further processing.
7. The other witness in support of the prosecution case happen to be one Hellen Kogo PW4 whose testimony was to the effect that on the material day she was at PW3's shop and within that vicinity he identified the Accused whom he had known prior to this incident. In the course of that moment PW4 told the Court that he heard the Accused tell the deceased, *'do not respond to me in that manner'*. In the observation of the witness he saw the accused arrive armed with a knife which he used to stab the deceased suffering serious

injuries at the back. The deceased cried for help so that they could be able to save his life. What followed is that later the deceased passed on and she was asked to record a statement with the police as part of the people who were present during the incident to give evidence in court thereafter on what actually took place.

8. The Prosecution in the effort to discharge the burden of proof with regard to the murder of the deceased also summoned the Pathologist who filled the post mortem report dated 19th December 2025 in which he made the following positive observations:
 - *Marked pallor, moderate periarteral cyanosis*
 - *Left upper arm laceration wound measuring 4x2cm*
 - *Stab wound to the right chest wall posteriorly measuring 2.5x1cm located 3.5cm from thoracic spine and 10cm from lateral border of the right scapular region at the level of 6th intercostal space.*
 - *Signs of medical intervention - venepuncture marks on the right dorsum hand.*

Respiratory system

Massive right sided haemothorax 3l of blood and blood clots drained

Stab wound at the 6th intercostal space on the right posterior chest wall with penetration of the right mid lobe, abutting at the junction of the inferior and superior venacava with 1cm puncture causing haemothorax and haemopericadium.

The Pathologist opined that the cause of death was severe haemorrhage secondary to venacaval puncture wound secondary to penetrating chest was injury secondary to stab wound to the posterior right chest.

The post mortem report was presented and admitted in evidence as Exhibit 1.

9. Last but not least was PW6 PC Titus Onyango who told the Court that on 15th December 2025 when he was instructed by his superiors to rush to the scene of murder where the suspect was being attacked by a mob. He managed to arrive on time to rescue the suspect who had already suffered some injuries from the mob and had him escorted to MTRH for treatment. He was later to be discharged, taken to police station to face the charge of murder for killing the deceased.
10. Finally, PW7 Elijah Meroka told the Court that he was one of the Investigating Officer of this crime in which the deceased was killed and in course of the investigations they recovered a red handle knife which was used to inflict the fatal injuries. This same knife with other exhibits of importance were sent to the Government Chemist at Kisumu for analysis and a report dated 14th January 2026 was shared with their office which now he presents before Court in support of the case. The said report produced as exhibit 2 opined as follows:

Items:

On the 12th day of January 2026 at the laboratory of the Government Chemist's department Kisumu, the following samples were received:

- (a) A kitchen knife 29cm with red plastic handle in a brown envelope marked "A".*
- (b) Cartilage in a plastic container marked "Abel Kipkemboi (deceased) B"*
- (c) Skeletal muscle in plastic container marked "Abel Kipkemboi (deceased) C"*
- (d) Blood sample in vacutainer marked "Abel Kemboi (deceased) D"*

Methodology: Fragment Analysis by capillary electrophoresis.

Findings:

- (a) The kitchen knife (item "A") was heavily stained with blood of human origin.*

(b) The DNA profiles generated from the above listed items are tabulated and produced at the end of this report.

Conclusion and Opinion

Based on the above findings,

(a) The DNA profile generated from the blood stains on the kitchen knife (item "A") matches the DNA profile generated from the reference sample of Abel Kemboi (deceased) with combined Random Probability of match ratio of 4.03×10^{30} and likelihood ratio of 2.48×10^{29} .

This is what I call half time submissions which is provided for under Section 306 as read with 307 of the Criminal Procedure Code. There are two parameters: first and foremost is whether the Prosecution has established a prima facie case to warrant this case to place the accused person on his defence. The second parameter being that the Prosecution has failed to establish the threshold of a prima facie case as a consequence of which there is no case to answer on the allegations of murder and he should therefore be discharged or acquitted forthwith.

Decision

11. In a prosecution case on a charge of murder under Section 203 of the Penal Code the Prosecution is required to prove certain ingredients:
 - (i) That the deceased died.
 - (ii) That the act of omission of the accused which caused the death of the deceased was unlawful.
 - (iii) That the act of omission of the accused which caused the death of the deceased must have been intentional with knowledge that death of grievous harm was its probable cause.
12. These three conditions must coexist and when one of them is absent or tainted with doubt, the charge is not said to be proved without reasonable doubt. It is trite law that in a murder trial, the

prosecution must show conclusively that death was caused by the act of the accused. In other words, there must be a nexus between the act of the accused person and the death of the victim.

13. In this discussion on whether the Prosecution has established a prima facie case based on the evidence or not, am reminded to be guided by the general approach laid down by the Court in **R v Galbraith (1981) 1.W.L.R. 1039** where it was stated:

“(1). If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous nature 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 evidence, taken at its highest, 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 strength or weakness depends on the view to be taken of a witness’s reliability or other matters which are generally speaking 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 then the judge should allow the matter to be tried by the jury. There will of course, as always in this branch of the law be borderline cases. They can safely be left to the discretion to the Judge.

14. What are the elements to look for before the Court exercises discretion to make a finding on a motion of no case to answer? The guiding principles are to be found in **Blackstone’s Criminal**

Practice 2010 at D15.56 in which the learned Authors stated as follows:

(a) If there is no evidence to prove an essential element of the offence, a submission must obviously succeed.

(b) If there is some evidence which, taken at face value, establishes each essential element, the case should normally be left to the jury. (c) If, however, the evidence is so weak that no reasonable jury properly directed could convict on it, a submission should be upheld. Weakness may arise from the sheer improbability of what the witness is saying, from internal inconsistencies in the evidence or from its being of a type which the accumulated experience of the court has shown to be of doubtful value.

(d) The question of whether a witness is lying is nearly always one for the jury, but there may be exceptional cases (such as Shippey [1988] Crim LR 767) where the inconsistencies are so great that any reasonable tribunal would be forced to the conclusion that the witness is untruthful, and that it would not be proper for the case to proceed on that evidence alone."

15. In **DPP v Selena Varlack [2008] UKPC 56** the Court restated the law as follows:

"The basic rule in deciding on a submission of no case at the end of the evidence adduced by the prosecution is that the judge should not withdraw the case if a reasonable jury properly directed could on that evidence find the charge in question proved beyond reasonable doubt. The canonical statement of the law, as quoted above is to be found in the judgment of Lord Lane CJ in R v Galbraith [1981] 2 All ER 1060, [1981] 1 WLR 1039, 1042. That decision concerned the weight which could properly be attached to testimony relied upon by the Crown as implicating the defendant, but the

underlying principle, that the assessment of the strength of the evidence should be left to the jury rather than being undertaken by the judge, is equally applicable in cases such as the present, concerned with the drawing of inference.”

16. The Prosecution submitted that it had established a prima facie case against the Accused person. There was sufficient evidence from PW1-PW6 which comprised of both direct and circumstantial evidence. This aspect of the submissions has been considered alongside the elements of the offence within the spectrum of Section 203 of the Penal Code. I am of the considered view that on that basis as a matter of law there is a prima facie case to call upon the Accused person to answer the allegations of murder as provided for under Section 306 as read with Section 307 of the Criminal Procedure Code. The constitutional rights under Article 50 shall also be explained to the Accused person in preparation of his defence which shall be scheduled on the 11th of May 2026 through a virtual link. The Deputy Registrar shall be the convener of the trial by informing both the State and the Defence Counsels.

**DELIVERED, DATED AND SIGNED AT ELDORE THIS 6TH DAY OF MAY
2026.**

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R. NYAKUNDI

JUDGE