



**Republic v Lilumbi & 2 others (Criminal Case 61 of 2015)
[2025] KEHC 545 (KLR) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 545 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 61 OF 2015
AC BETT, J
JANUARY 27, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

BONIFACE LILUMBI 1ST ACCUSED

SETH TALIA SHAMALLA ALIAS SETSU 2ND ACCUSED

MESHACK LIPEYA CHIMWANI ALIAS ABEL 3RD ACCUSED

RULING

1. The Accused persons Boniface Lilumbi, Seth Talia Shamalla and Meshack Lipeya Chimwani Alias Abel have been charged with murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). It is alleged that between 20⁹th and 21st September 2015 at Mundulu Village, Shidodo Sub-location in Murhanda Location Kakamega East District within Kakamega County, the three aforesaid Accused persons jointly murdered Agnes Mmbone Shioso.
2. The Prosecution called four witnesses in total. PW₄, produced a post mortem report that confirmed that the deceased died as a result of intracranial bleeding caused by blunt force trauma to the head. The deceased had two obvious fractures on the skull inflicted from the back. On cross-examination, PW₄ stated that the specific injuries were two deep cut wounds at the back of the head. In the circumstances, it is evident that the deceased succumbed to injuries arising from an assault using an object that resulted in blunt force trauma.
3. Section 306 (1) of the [Criminal Procedure Code](#) states as follows:

“When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed



the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.”

4. The court is called upon to consider whether the prosecution has established a prima facie case against the Accused persons. A prima facie case is established when the prosecution has adduced sufficient evidence against an accused to demand an explanation from him the absence of which, the court would find him guilty of the charges.
5. In the case of *Republic v. Abdi Ibrahim Owoi* [2013] eKLR, the court defined a prima facie case as:-

“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”.
6. In the premises, where the prosecution’s evidence is on the face of it, insufficient to sustain a conviction even if no defence were made then the court should acquit the accused.
7. There were no eye witnesses to the incident. PW2 and PW3 adduced evidence that did not link any of the Accused to the death of the deceased. The two witnesses linked the 1st Accused and the 2nd Accused to the murder of the deceased because it was said that they had earlier threatened the deceased. According to PW1 however, they did not find anything connecting the Accused persons to the death of the deceased.
8. PW2 testified that on 21st September 2015, at around 7 a.m., she received a phone call from her neighbour Julius who told her that some people had murdered Agnes. She proceeded to the deceased’s home where she found people. Agnes’ child was being taken to the hospital. The 1st Accused was seated down with a slasher. She went into the house and saw the deceased’s body. It had blood all over. PW2 further stated that people beat Boniface, the 1st Accused and he said that he was with Lewis when they killed the deceased. Lewis has not been seen to date.
9. From the evidence, I find that a prima facie case has been established against the 1st Accused and he therefore has a case to answer.
10. With respect to the 2nd Accused and the 3rd Accused, there was no evidence to link them to the death of the deceased at all. They do not have a case to answer. I accordingly acquit them under Section 306 (1) of the *Criminal Procedure Code*. I hereby order that they be released forthwith unless they are otherwise lawfully held. As for the 1st Accused, he is hereby placed on his defence in accordance with Section 306 as read with Section 307 of the Criminal Procedure Code.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 27TH DAY OF JANUARY 2025.

A. C. BETT
JUDGE

In the presence of:

Ms. Chala for the Prosecution

Ms. Repha for the Accused persons

Court Assistant: Polycap

