



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Michael (Criminal Case E029 of 2021)
[2025] KEHC 1159 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1159 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL CASE E029 OF 2021
EN MAINA, J
FEBRUARY 27, 2025**

BETWEEN

REPUBLIC STATE

AND

ANDREW KILONZO MICHAEL ACCUSED

RULING

1. The Accused was charged with Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). It is alleged that on diverse dates between 12th April 2017 and 14th April 2017 at an unknown time at Kyumbi area, Mathatani Sub-location, Athi River Sub-County in Machakos County, jointly with others not before court the accused murdered John Njoroge Njuguna.
2. The accused pleaded not guilty to the charge whereupon the prosecution embarked on proving its case by calling seven (7) witnesses. The sum total of their evidence is that the accused person was the last person to be seen with the deceased on 12th April 2017 following which his body was collected by the roadside by the police on 14th April 2017 and taken to Machakos Level V Hospital where it was subsequently identified by his family.
3. The court heard that the family had reported a case of a missing person at Kyumbi and Mathatani Police Posts. This changed after the body of the deceased was found and positively identified by the kin following which a post mortem was performed on the body at the Machakos Level 5 Hospital.
4. The prosecution produced a Post Mortem Form in which the Pathologist, who performed the post mortem on the body of the deceased, opined that the cause of death was “head injury secondary to blunt force trauma.”
5. At the close of the prosecution’s case Learned Counsel for the parties filed written submissions on whether or not the prosecution had established a prima facie case against the accused person to warrant him to be put on his defence.



6. Miss Kaburu, Learned Prosecution Counsel, argued that the prosecution had established all the elements of the offence of murder as the accused was the last person to be seen with the deceased, that there was proof of malice aforethought and that the cause of death was established to be a head injury secondary to blunt force trauma which could not have arisen from an accident. Counsel urged this court to find that the accused has a case to answer and put him on his defence.
7. Mr. Mutinda, Learned Counsel for the accused however, disputes that the accused has a case to answer. It is his submission that the case against the accused person rests entirely on circumstantial evidence; that the chain-flow of evidence is distorted by the long duration of time between the time the accused was last seen with the deceased and the time the body was discovered; that there is a gap in the evidence regarding the whereabouts of the deceased on 13th April, 2017 and further that the case is based on suspicion which cannot be used as a basis for conviction of the accused. Counsel contended that there is a high possibility that the deceased interacted with other people between the time he was seen with the accused and the time he was discovered dead; that the prosecution did not prove that it is only the accused who interacted with the deceased.
8. At this juncture this court is not required to conclusively determine the guilt of the accused but only whether there is a prima facie case as would warrant this court to put him on his defence. A prima facie case is established where a reasonable tribunal properly applying its mind would convict even were the accused person to remain silent when put on his defence – see the case of *Bhatt -vs- Republic* [1957] EA 332.
9. Applying the principles in the case of *Bhatt -v- Republic (supra)* to this case and having considered the evidence on record and submissions of Learned Counsel and the cases cited I have come to the conclusion that the prosecution has established a prima facie case against the accused sufficiently to warrant him to be put on his defence. He shall therefore be required to enter his defence.

It is so ordered.

**RULING SIGNED, DATED AND DELIVERED VIRTUALLY AND ALSO ORALLY IN COURT
ON THIS 27TH DAY OF FEBRUARY, 2025.**

E. N. MAINA

JUDGE

27/02/2025

In the presence of:

Mr. Mutinda Kimeu H/B Mr. Kituku Advocate for the Accused

Ms Nyauncho for the state

Andrew Kilonzo Michael - Accused person

C/A: Geoffrey

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