



**Republic v Andongo (Criminal Case 8 of 2018)
[2025] KEHC 3945 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3945 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 8 OF 2018
JRA WANANDA, J
MARCH 28, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL OMONDI ANDONGO ACCUSED

RULING

1. This is a Ruling on whether the accused person has a case to answer.
2. The accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars are that on 24/01/2018 at Moi University area, within Uasin Gishu County, he murdered one Kenneth Kipchoge Koech.
3. From the record, the accused took plea on 20/01/2016 before Hon. Lady Justice Githua. He denied the charge and a plea of not guilty was entered. The accused who was represented by Ms. Karuga Advocate, was then admitted to bond on 12/6/2018 and the trial commenced on 25/09/2018. The prosecution called 9 witnesses and closed its case on 13/2/2024.
4. The evidence of the first 8 witnesses was taken before Hon. Lady Justice H. Omondi (as she then was). Upon the Judge being elevated to the Court of Appeal, I took over the case and received the evidence of the last, 9th, witness. Needless to state, as the matter was part-heard when I took it over, the parties requested, and I agreed, to proceed with it from where it had stopped. Accordingly, the provisions of Section 200(3) of the *Criminal Procedure Code* were complied with whereof the defence informed the Court that it would not seek recall of any of the witnesses for examination.

Prosecution evidence

5. PW1 was Emily Chelagat Rotich. She stated that she works at Moi University, that on 24/01/2018, she was from her home on her way to collect milk when she heard noises from the direction of the



university main campus, that she heard people shouting “mwizi mwizi” and some young people had apprehended someone who ran into her compound, that the alleged thief was a man and he was naked, and that it was alleged that he had stolen a phone. She stated further that she addressed the group requesting that they reason together since she recognized the person, and requested that they negotiate with the person. She added that one Kipkorir who was following the crowd also pleaded with the students not to harm the thief but someone from the crowd suddenly produced a knife and stabbed Kipkorir. She stated that she saw the assailant clearly and identified him as being the accused person before Court. She stated that she watched Kipkorir fall and she recognized the assailant (accused) as he was her customer and she used to sell him grains, vegetables, and tomatoes and that she had known him since 2017. In cross-examination, she stated that the incident occurred around 4:00pm and that 5 people among the crowd were university students.

6. PW2 was Inspector Paul Kibor, stationed at Langas Police Station. He stated that on 12/02/2018 in the afternoon, he was called upon to conduct an identification parade in reference to Samuel Adongo (accused), which he conducted. He described how the exercise was conducted, that there were 9 people placed in the parade and he explained how two respective witnesses, PW1 and one Titus Koskei, both pointed out and/or identified the accused person. He then produced the Parade Form as an exhibit and added that in constituting the parade, he chose people of the same situation and complexion as the accused.
7. PW3 was Samuel Keter. He stated that he lives at Moi University and he operates a hotel in the neighbourhood. He stated that on 24/01/2019 at 4:00 pm, he was at the hotel when he noticed people running towards the market, he got out and followed them and he had someone say “let’s return him and kill him”, and that he realized that someone had been apprehended by the group. According to him, some in the group were university students, but the students were outnumbered by the crowd, part of the crowd held the thief and others held the students, and some people also held the person who had been robbed of the phone. He stated that the crowd was divided in opinion as some people proposed that the matter be negotiated, that suddenly, he heard a man screaming out that someone had been knifed and people begun running after the assailant, that he noticed someone lying on the ground, it was Korir whom he knew, and was bleeding. He stated that he looked for help to transport the victim to the hospital, he got a motor cycle operator and lifted Korir thereunto and who was then taken to the Moi Teaching and Referral Hospital (MTRH) but he later heard that Korir had died. He however stated that he did not see the person who fled after stabbing Korir. In cross-examination he stated that the incident took place at about 4:00 pm and that the alleged thief broke loose during the commotion that ensued after the stabbing and fled.
8. PW4 was Daniel Korir. He stated that on 24/01/2018 at 4:00 pm while at the centre, he noticed some people approaching while pulling each other, he noticed that members of the public were struggling with students who were proclaiming that they were going to kill a young man, and that he and others tried to negotiate with the students not to kill the alleged thief. He added that the crowd outnumbered the students, and all went behind the toilet but shortly, he heard that someone had been knifed, he rushed to check and realized that the victim was Benjamin Kipkorir who was known to him and who was bleeding from the stomach. He stated that he got two men to help lift the victim onto the motorcycle and who was then rushed to MTRH. He stated that he later learnt that the victim had died, but he did not know who had stabbed him as he went to the scene later on, but he heard that it was a student.
9. PW5 was Henry Adera. He stated that he lives and works at Moi University in the Catering Department, that on 24/01/2018 at 4:30 pm, he was at the Cheboiwo Centre as he was off duty, when he saw students coming to harass a young boy whom they claimed was a thief and wanted to take him



to the university, that he (PW5) tried to intervene by urging the students to let the police handle the matter but they refused to listen, that some young men and boda boda riders were pulling the boy to one direction and the students were pulling him to a different direction. He stated that the students claimed that the boy had stolen their phone, and that in the commotion, the alleged thief broke loose and fled, that after a short while, he saw another young man running towards the hostel, followed by the crowd and he noticed “Mzee Kipkoech” lying on the ground bleeding, and he then was rushed to hospital but in a short while they learnt that he had died. He stated that he learnt that Kipkoech was stabbed using a knife but he did not see who stabbed him as he only saw the accused running very fast towards the hostel with the crowd behind. He told the Court that he knew the accused as he was the chair of the Nyanza Group and he used to speak to him in Dhuluo. In cross-examination, he stated that he did not see the stabbing but only saw the injured man on the ground. He also stated that the accused fled to Hostel C and others to Hostel F.

10. PW6 was Grace Kemei. She stated that she lives in Cheboiwo, Moi University where she works in the security department, that on 24/01/2018 at 3:00 pm, she sought permission to go home and while inside a shop within the centre, she saw a group of boys pulling and pushing, that one group was pulling a young boy towards the students hostel and another group was pulling him in a different direction, a crowd gathered and she saw them going behind some building. She stated that shortly, she heard someone scream and shout “ameuwa”, she got out to check and found someone lying on the ground bleeding at the groin and she recognized the bleeding man as Kipkoech, they lifted and carried him to a motorcycle and he was taken to hospital, she followed him to the hospital and later learnt that he had died. She added that she knew Kipkoech as a businessman in the area but did not see who had stabbed him.
11. PW7 was Felix Kimurgor Malakwen. He stated that on 2/02/2018 at 10:00 am he was at MTRH where he identified the body of the deceased Kipkoech to the doctor for post-mortem. He stated that the deceased was his brother, that the body had an injury at the left groin and that the doctor informed them that death was caused by excessive bleeding.
12. PW8 was Dr. Macharia Benson, a pathologist based at MTRH. She stated that on 2/07/2018, he conducted an autopsy on the body of Kenneth Kipkoech which was identified to her by Felix Malakwen and Mathew Kosgei. She stated her findings to be that the deceased was a 45 years old male, dressed in a red blood-stained t-shirt, that externally there was a stab wound at the left thigh region measuring 3 cm long x 1 cm wide and 7 cm deep, the injury had damaged the main blood vessels to the lower limb and there was evidence of loss of blood as shown by pale eyes. He testified further that the deceased did not have any defence wound, internally all the organs were very pale being a sign of loss of blood and the cause of death was hypovolaemic shock due to excessive bleeding due to single penetrating stab wound. He then produced the post-mortem. In cross-examination, he reiterated that the cause of death was due to stab wound inflicted by a sharp long object.
13. PW9 was the Investigating Officer, Police Constable Geoffrey Kirambugu Avedi. He stated that at the material date, he was attached at Langas Police Station, that on 25/01/2018 while at the office, a report was received from Kesses Police Station of a murder, they were informed that there was tension between university students and Kesses residents, and that with other officers, they proceeded to the scene. He stated that the incident had occurred on 24/1/2018 at Cheboiwo market, at the scene, they found blood but which was covered with sand and did not recover the murder weapon and that they were told that there was a confrontation between university students and residents over a phone that had been sighted and which had been earlier reported as robbed and that the confrontation occurred at a Chemist by the name Eldospon. He stated further that they met the owner of the chemist, one Joseph Metto, who told them that someone by the name Kevin had brought the phone, an Infinix Hot 4 Light



for charging and that one of the university workers, upon sighting the phone, informed Mr. Metto that the same had been stolen, that the worker then went to the person whose phone had allegedly been stolen from, one Walter Odhiambo Molo and informed him about the recovery. He added that Walter then came to the Chemist and indeed confirmed that it was the same phone that had been stolen from him, Walter checked and found one of his photos in the phone thus confirming that indeed it was the same phone. He stated that Walter then set a trap, they agreed that Walter would be informed when the customer who brought the phone would return to collect it, that indeed the customer returned and Walter was informed, so Walter organized his friends to go to the Chemist to arrest the customer, one Kevin, and that among the people Walter organized was the accused.

14. He stated that however, by the time that they reached the Chemist, they found that Kevin had already picked the phone and left, Mr. Metto called Kevin back pretending that he had found a buyer for the phone, that this is because although Kevin had brought the phone for charging, he had also informed Metto that he was looking for a buyer thereof. He added that Kevin returned and Walter started pretending to negotiate with him over the purchase of the phone, and it was at that time that they arrested Kevin to take him to the University Security Office but in the process, members of the community stepped in and demanded that Kevin be taken to the area Chief instead, and this was because previously when such people were arrested by the students, they would instead be beaten and killed before and/or without reaching the Security Office. He stated further that a confrontation ensued and the members of the community managed to snatch Kevin from the students and released Kevin who ran away, that 2 witnesses stated that at that point they saw the accused removing a knife from his waist and said in Kiswahili that “sababu mumemwachilia mwizi”, and then stabbed the deceased, Kenneth Koech (who was among the members of the public who had snatched the deceased) on the upper thigh using a knife, the deceased fell down and the students ran away because they were few and members of the public followed them but in vain since they also feared retaliation from the other students.
15. He told the Court that one of the witnesses in this matter, PW3, Samuel Kipkosgei Keter, is the one who stated that he took the deceased to the Moi University Dispensary while the deceased was bleeding profusely, the other witnesses also assisted in taking the deceased to the dispensary included PW6, Grace Kemei, and that the nurses at the dispensary referred the deceased to MTRH since they had been unable to stop the bleeding but he died on the way to hospital. He testified further that he witnessed the post-mortem at MTRH and the cause of death was excessive bleeding due to a single penetrating stab wound that caused shock. He added that the accused escaped from the university and came back on 7/02/2018 when police arrested him. He stated further that on 12/02/2018 an identification parade was conducted and that the accused was positively identified by 2 witnesses, Titus Kipkosgei and Emily Chelagat Rotich (PW1) and he thereafter charged the accused with the offence. In the end, he stated that the incident occurred at around 4:00 pm. In cross-examination, he stated that they did not recover the murder weapon nor the phone in issue, that among the students who accompanied Walter Odhiambo, he only managed to get the name of one, Bralington Onyango, who was also a room-mate to the accused, that the stabbing occurred about 150 metres from the chemist, and that the accused was arrested when he presented himself to the University Security Office

Determination

16. Under Section 306 of the *Criminal Procedure Code*, this Court is obligated, upon close of the prosecution’s case, to rule on whether a case to answer has been established against the accused. Section 306(1) and (2) provide as follows;



- (1) 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 recording a finding of not guilty.
 - (2) When the evidence of the witnesses for the prosecution has been concluded the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court on his own behalf or make unsworn statement and to call witnesses in his defence
17. In view thereof, at this juncture, what the Court is called upon to do is simply to determine whether, at this stage, based on the evidence adduced by the 9 witnesses, the Prosecution has established a prima facie case to warrant the accused to be placed on his defence to answer to the charge of murder.
 18. Needless to state, the burden of proof to establish the case against the accused lies on the Prosecution throughout the trial. At no point does that burden shift to the accused reason being that an accused person's constitutionally guaranteed rights include the right to remain silent, the right to adduce and challenge evidence and the right not to give any incriminating evidence. However, at this stage, the prosecution is not expected to have proved the case beyond reasonable doubt. The measure is for a prima facie case to be established.
 19. At this stage therefore, the Court is only considering whether the accused person has "a case to answer", which term was aptly described by G. Dulu J in the case of Republic vs Joseph Shitandi & Another (2014) eKLR as follows:

"A case to answer is a case where if the accused keeps quiet, the evidence of the prosecution should be such that a conviction will result."
 20. The procedure in determining whether an accused has a case to answer was discussed in the case of Republic vs Samuel Karanja Kiria (2009) eKLR where J.B Ojwang J (as he then was) stated the following:

"The question at this stage is not whether or not the accused is guilty as charged but whether there is cogent evidence of his connection with the circumstances in which killing of deceased occurred. That the concept of prima facie case dictates as a matter of law that an opportunity created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled ... The Court of Appeal in Criminal Appeal No. 77/2006 expressed that too detailed analysis of evidence stage at no case to answer stage is undesirable if the court is going to put accused on his defence as too much details in the trial court's ruling could then compromise the evidentiary quality of the defence to be mounted."
 21. The trial Court is however cautioned that, at this stage, it should not make definitive findings should it conclude that the accused has a case to answer. In this regard, in Festo Wandera Mukando vs Republic [1980] KLR 103, E. Trevelyan J stated as follows:

"..... we draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, and an extreme case, may require an appellate court to set aside an otherwise sound judgment. Where a submission of "no case" to answer is rejected, the court should say no more than that it is. It is otherwise



where the submission is upheld when reasons should be given; for then that is the end to the case or the count or counts concerned.”

22. I have considered the evidence on record and the testimonies of the witnesses as set out above and, without delving into the merits thereof, I only state my finding to be that the prosecution has established that the accused person has a case to answer. All I would state for now is that there is testimony allegedly placing the accused at the scene of crime at the material time, and also testimony alleging eye-witness sighting of the accused stabbing the deceased.
23. The accused is therefore informed of his rights under Article 50(2)(i)(j)(k) of *the Constitution* and also under Section 306(2) of the *Criminal Procedure Code* to address the Court. Accordingly, he is informed that he has a right to address the Court either personally or by his Advocate, and to give evidence on his own behalf or to give an unsworn statement, and to call witnesses in his defence.
24. The accused is are therefore placed on his defence.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 28TH DAY OF MARCH 2025

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WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Accused present in open Court

Ms. Kemboi h/b for Ms. Wanjiku Karuga for the Accused

Ms. Okaka for the State

Court Assistant: Brian Kimathi

