



**Republic v Sindeng alias Dan & 4 others (Criminal Case 8 of 2020)
[2025] KEHC 3613 (KLR) (Crim) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3613 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 8 OF 2020
K KIMONDO, J
MARCH 25, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

DUNCAN ODHIAMBO SINDENG ALIAS DAN 1ST ACCUSED

JOHN MWANGI WANJIRU ALIAS JONTE 2ND ACCUSED

AARON MWARARI WANJIKU ALIAS MWARARI 3RD ACCUSED

JOHN MUNGAI WAITHERA ALIAS MUNGA 4TH ACCUSED

MOSES NGARI MWANGI ALIAS KABARIDI 5TH ACCUSED

RULING

1. The accused persons are charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. The Director of Public Prosecutions informs the High Court that on the 7th October 2019 at Kipawa Estate Area, Njiru Sub-County, within Nairobi County jointly with others not before the court, they murdered Isaac Ochieng Awuor.
3. They pleaded not guilty. The prosecution marshalled eleven witnesses. I am now called upon to determine whether the accused have a case to answer.
4. Learned counsel for all the accused have filed detailed submissions. Those for the 1st accused are dated 4th November 2024 together with a list of authorities. The 2nd accused's submissions are dated 18th February 2025 while those for the 3rd accused are dated 25th January 2025. The submissions by the 4th accused are dated 17th January 2025; and, lastly, those for the 5th accused are dated 20th January 2025.



5. The sum total of all those submissions is that whereas the death of the deceased is not in doubt, the circumstances that led to his demise or the connection with the accused were not proved. In particular, they submitted that the witnesses failed to positively identify the accused or to establish any clear link between the accused and the attack upon the deceased.
6. Furthermore, the evidence is challenged for being contradictory, sketchy and failing to pinpoint which of the accused persons were involved or the kind of weapons employed. Were they spades, rungus or a metal bar; and, why were they not produced in evidence? Could the deceased have been injured from a fall from the lorry? In addition, counsel submitted that there was no clear reason why the five accused persons were singled out for prosecution.
7. In a synopsis, the defence contends that the evidence does not meet the required standard of proof; and, accordingly, the accused should be acquitted at this early stage. Reliance was made on a number of precedents including *Bhatt v Republic* [1957] E.A. 332, *Republic v Abdi Ibrahim Owi*, Garissa High Court Criminal Case 6 of 2011 [2013] eKLR, *Republic v Juma Kituko Mwambegu*, Malindi High Court Criminal Case 12 of 2018 [2020] eKLR and *Wamunga v Republic* [1989] KLR 424.
8. The Republic's submissions on the other hand are dated 20th February 2025. According to the learned prosecution counsel, there is overwhelming evidence connecting all the accused to the homicide which now calls for a rebuttal. Reliance was placed on sections 20 & 21 of the *Penal Code* as well as the decision in *Republic v Jeremy Kiogora Mbae*, Meru High Court Criminal Case 34 of 2014 [2014] eKLR.
9. My finding is as follows. It bears repeating that all the accused are deemed innocent at this stage. Furthermore, the inquiry at this juncture is merely to establish if a prima facie case has been made out requiring a rebuttal from the accused.
10. I have paid heed to the evidence of some of the witnesses: Charles Njihia Mwangi (PW4) is a contractor. On 7th October 2019, he ordered for delivery of sand to a site in Kamulu. A lorry driven by one Gatua arrived with three loaders atop it. According to him, a group of "twenty young men approached with rungus and spades....one jumped on top of the lorry and hit one of the three who were on top of the lorry. He was hit on the head and fell". The witness could not identify any of the accused.
11. But according to Joshua Owino Ojwok (PW1) there were ten or so attackers armed with spades, rungus and a metal bar. He said they included all the five accused persons and who were demanding payment from the lorry driver. He claimed that they were chased by the accused persons as well as Morris, Kababa, Obega and Katoli who are not before the court. The witness hid in an adjoining school until he was called by the site owner to rescue the deceased. The deceased was lying on the ground with blood oozing from behind his head.
12. There is then the testimony of Boniface Ouma Omolo (PW2). He stated that the accused together with others not before the court "walked towards us carrying spades, metal bars and rungus. Jonte (2nd accused) came into the top of the lorry and found [deceased] and hit him with a piece of metal". PW2 ran away towards another building 20 metres away and hid on the 3rd floor.
13. To be fair to the defence, this witness made three statements to the police dated 10/10/2019, 3/8/2020, 26/7/2022. He contradicted PW1 who had said the attackers rode to the scene on motorbikes. He also conceded that as he ran away, he could not clearly see what was happening behind the lorry.
14. The death of the deceased is no longer in doubt. His wife, Mary Adhiambo (PW3) identified the body at the City Mortuary. On 17th October 2019, the postmortem was conducted by Dr. Bernard Midia (PW11). According to the pathologist, the cause of death was "head injury due to blunt force trauma".



15. Applying the precedents in *Bhatt v Republic* [1957] E.A. 332 and *R v Kipkering arap Koske & another* 16 EACA 135 (1949); and, upon the digest of the evidence of all the 11 prosecution witnesses and documentary evidence, I find that the Republic has established a prima facie case against the accused.
16. Accordingly, under the provisions of section 306 (2) of the *Criminal Procedure Code*, I now place all the accused on their defence.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF MARCH 2025.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

The accused.

Ms. Odero for the 1st accused instructed by Odero & Associates Advocates.

Ms. Gituma holding brief for Mr. Onyari for the 2nd accused instructed by E. M. Onyari & Company Advocates.

Ms. Gituma for the 3rd accused instructed by Kiriinya & Associates Achieng Advocates.

Ms. Masaki holding brief for Mr. Macharia for the 4th accused instructed by Macharia, Gaitho & Murigu Advocates LLP.

Ms. Masaki for the 5th accused instructed by Masaki, Omaiyo & Gathu Advocates LLP.

Ms. M. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

