



**Republic v Ahmed (Criminal Case E004 of 2023)  
[2025] KEHC 5334 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5334 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL CASE E004 OF 2023  
RN NYAKUNDI, J  
APRIL 29, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ALI AHMED ..... ACCUSED**

**RULING**

1. The accused Ali Ahmed was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on 27<sup>th</sup> February, 2024 at Kitale Township in Trans Nzoia West Sub-County within Trans Nzoia County, in the Republic of Kenya murdered Antony Pkiror Arentum.
2. The state paraded five witnesses to prove the case against the accused person beyond reasonable doubt on the following elements:
  - i. The fact of death
  - ii. The fact that the deceased's death was caused by an unlawful act or omission.
  - iii. That the accused committed the unlawful act which caused the death of the deceased; and
  - iv. That the accused had malice aforethought.

**The evidence for the prosecution**

3. The first witness for the prosecution PW1 was police constable Jackson Angina as at the time of the trial, he was based in Kitale main prison. His evidence was that on 27<sup>th</sup> February, 2024 at about 15:50 hours he was assigned duties at Kitale Law courts and most specifically court no. 7. In the course of discharging his duties, the deceased came to his workplace location and asked him whether he will accompany him to the nearby shopping center to buy some cigarettes. He agreed to that request and



they both crossed over to a nearby shop which sells wine and cigarettes. It was his evidence that they decided to sit down as they were waiting for the owner to comply with the order of selling cigarettes to them. According to PW1, the accused was not a person known to him prior to this particular day. However, he came to learn that he was an administration police officer when he drew a revolver and unlocked it. That is the time when the deceased told the accused to return it back inside the waistband. It was further the testimony of PW1 that simultaneously, two young men joined them at the shop who seemed to know the accused very well. In a short while, the accused drew the revolver and fired. That is when the owner of the shop and the two young men took flight. It did not take long before he could see blood oozing from the deceased who was shot at by the accused. This matter was escalated by reporting to the senior authorities at the prisons as the witness took an escape route to the law courts.

4. In his evidence PW1 confirmed to the court that there was no prior conflict, provocation or exchange of any insulting words between the accused and the deceased. That this incident is one which one cannot be able to understand what triggered the shoot out from the accused.
5. In cross examination by learned counsel Mr. Ngaira, PW1 stated that it is a long experienced officer with a total work life of twenty-nine (29) years. He confirmed that on the material day 27<sup>th</sup> February, 2024 they crossed from the law courts, to the shop to purchase cigarettes. At about 9:48AM and at about 9:50AM the accused fired the gunshots. He also explained to the court that at that scene, there were two young men photographers, the accused, the deceased and himself. He also confirmed to the court that the accused shot one ammunition and stepped out of the scene but shortly he came back only to shoot himself, sustaining serious injuries. It was also his evidence that a revolver cannot release ammunitions without one pulling the trigger. He also denied that he had taken any alcoholic drinks prior or during the visit to that shop.
6. The next witness was Corporal Emily Nanjala who testified as PW2. She is based at Trans-nzoia county, working in the same formation with the accused. She recalled that on the material day of 27<sup>th</sup> February, 2024, as usual they held the routine parade to assign each officer security duties within the county who left immediately for those assignments. He confirmed that the accused person was one of those who was assigned patrol duties.
7. PW3 was Dr. Dennis Narwigi who told the court that he works as a Senior Medical officer at Kijana Wamalwa Hospital. He also confirmed to court that he is a qualified a medical officer with a degree in Bachelor and Surgery and licensed to operate. As the one conducted the autopsy against the body of the deceased, he observed the following:
  - a. That the deceased sustained injuries along the cardiovascular system which were occasioned by bullet which penetrated the right upper lobe exiting at the right lower lobe where the bullet fragments were discovered.
  - b. According to the pathologist (PW3), the bullet had a downward right side trajectory. As a result of the examination, he formed the opinion that the cause of death was right haemathorax / neck varicose injury secondary to gunshot wounds. The post mortem report was admitted as documentary evidence in support of the prosecution case.
8. PW4 Chief Inspector Alfred Kanyi gave evidence as a ballistic expert and detailed the findings in the report dated 11<sup>th</sup> March, 2024 following an exhibit memo from the DCI Trans Nzoia West sub-county. In answering the questionable issues raised in the exhibit memo, PW4 explained to the court in summary as follows:
  - a. That the exhibits received for examination were:



- i. One Taurus revolver S/no. KE AP TK69447 marked exhibit (A)
- ii. One round of ammunition marked exhibit (B)
- iii. Three fired cartridge cases marked exhibits (B1, B2 and B3)
- iv. Three bullet fragments marked exhibits (C1-C3).

9. In adherence to the report he made the observations in line with the exhibit memo report which touched on the primary exhibits as follows:

Exhibit (A) is a Brazilian made Taurus revolver designed to chamber rounds of ammunition in caliber. 38 special. It is in good general and mechanical condition and complete in all its component parts. The revolver was successfully test fired by means of three rounds of ammunition exhibit (B) and two picked from our lot in the laboratory. The test cartridge cases and the test bullets recovered and marked as (TC1-TC3) and (TB1-TB3) respectively and were retained for comparison purposes.

Exhibit (B) is one round of ammunition in caliber .38. special. The round is live as it was successfully test fired in exhibit (A). The test cartridge was marked TC1 (B)

From the above examination, I formed the opinion that exhibits (A) and (B) are capable of being fired and that are a firearm and ammunition respectively as defined under the [firearms Act](#) Chapter 114 Laws of Kenya.

Exhibits (B1-B3) are three fired cartridge cases. Each is a component part of formerly a round of ammunition in caliber. .38 special.

Comparative microscopic examination of the exhibits (B1-B3) in conjunction with the test cartridges cases (TC1-TC3) fired (A) revealed sufficient matching ejector, breach face and firing pin indentation markings which enabled me to form the opinion that exhibits (B1, B2 & B3) were all fired from the Taurus revolver S/no. KE AP TK69447 marked exhibit (A).

Exhibits (C1-C3) are three fired bullet fragments. Each is a component part formerly a round of ammunition on caliber .38 special. Exhibit (C1) measures 0.43 grams. Exhibit (C2) measures 7.98 grams. Exhibit (C1&C2) are damaged as a result of hitting a hard surface.

Exhibit (C3) measures 9193 grams and has six (LEAS) right hand twist. The tip is damaged as a result of hitting a hard surface.

Comparative microscopic examination of exhibit (C3) in conjunction with the test bullets (TB1-TB3) fired in exhibit (A) revealed sufficient matching bullet striation markings which enabled me to form the opinion that exhibit (C3) was fired from Taurus revolver S/no. KE AP TK69447 marked exhibit (A).

10. With that evidence from PW4, the prosecution pitched its case that the identifiable revolver in possession of the accused was the one used during the shootout at the scene of the crime on 27<sup>th</sup> February, 2024.
11. Finally, the prosecution adduced evidence of sergeant Sylvanus Madewa as the investigating officer who carried out the investigation to establish the circumstances surrounding the death of the deceased at



Kitale town. In his testimony before this court, he highlighted the findings of captured at the scene in which the accused person used his Taurus revolver serial no. TK69447 to fire three ammunitions in which three spent cartridges were also recovered at the scene. The body of the deceased was taken to the mortuary and the accused who had also attempted to shoot himself was escorted to Eldoret life care hospital for treatment. According to PW2, putting the material evidence captured at the scene, the post mortem report and also the ballistic examination report, he recommended an indictment of the accused person for the offence of murder contrary to section 203 of the *Penal Code*.

12. The question to be answered by this court at the close of the prosecution case pursuant to section 306 of the *Criminal Procedure Code* is whether a prima facie case has been made out to warrant the accused person to be placed on his defense. Following the assessment of the evidence by the prosecution at half-time stage before hearing the accused persons, a trial court can acquit the accused if it forms the opinion that no case has been made out against him/her to sufficiently require him/her to adduce evidence in answer to the charge or offense. However, the trial court can also call the accused to enter his/her defense if it forms the opinion in reference to the elements of the offence, he must give evidence in rebuttal or to sufficiently explain the true perspective of the offence and allegations made by the prosecution, subject of the criminal trial.

### **Determination**

13. As I have stated above the issue before me at this stage is whether the evidence so far adduced warrants calling upon the accused to defend himself. Put differently, does the accused have a case to answer? In *Republic vs. Abdi Ibrahim Owl* [2013] eKLR a prima facie case was defined as follows: -

“Prima facie” is a Latin word defined by Black’s Law Dictionary, 8<sup>th</sup> 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”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with. In *Ramanlal Trambaklall Bhatt v. R* [1957] E.A 332 at 334 and 335, the court stated as follows:

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction.” This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence”. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence...It is may not be easy to define what is meant by a “prima facie case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”

14. Similarly, in *Ronald Nyaga Kiura vs. Republic* (2018) eKLR the court stated as follows:

“It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that prima facie has been made out against the accused



person sufficient enough to put him on his defence pursuant to the provisions of section 211 of the *Criminal Procedure Code*. A prima facie case established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person. This is well illustrated in the cited Court of Appeal case of Ramanlal Bhat –vs- Republic (1957) EA 332. At that stage of the proceedings the trial court does not concern itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence.”

15. The risks involved in drawing conclusive determinations at this preliminary phase, particularly when the Court has determined sufficient evidence exists to proceed; are significant and understandable. This principle was thoughtfully articulated by Justices Trevelyan and Chesoni in their decision for Festo Wandera Mukando vs. The Republic [1980] KLR 103, where they recognized the importance of procedural caution as hereunder:

“...we once more 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, in an extreme case, may require an appellate court to set aside an otherwise sound judgement. Where a submission of “no case” 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.”

16. Having considered the evidence adduced thus far and the various decision as cited, I must now address the critical question at hand: whether the prosecution has established a prima facie case against the accused that would warrant calling upon him to enter his defense.
17. The fact of death has been conclusively established through the testimony of PW3, Dr. Dennis Narwigi, who performed the autopsy and determined that the deceased died as a result of right haemathorax/neck varicose injury secondary to gunshot wounds. The post-mortem report detailing these findings was admitted as documentary evidence, providing a scientific basis for this element of the charge.
18. Regarding the unlawful act causing death, PW1, Police Constable Jackson Angina, provided eyewitness testimony that the accused drew a revolver and fired at the deceased without any provocation, prior conflict, or exchange of insulting words. In cross-examination, PW1 maintained that there was no apparent reason for the shooting, stating that a revolver cannot discharge ammunition without someone pulling the trigger. This evidence, if taken at its highest, suggests the commission of an unlawful act resulting in death.
19. The connection between the accused and the unlawful act has been established through several strands of evidence. PW1 identified the accused as the person who fired the shot. PW2, Corporal Emily Nanjala, confirmed that the accused was an Administration Police officer assigned patrol duties on the material day. Most significantly, PW4, Chief Inspector Alfred Kanyi, provided expert ballistic evidence confirming that the three fired cartridge cases recovered from the scene were discharged from the Taurus revolver bearing serial number KE AP TK69447, which was in the possession of the accused. The bullet fragments recovered during the autopsy were also conclusively matched to the same firearm.
20. While there may be aspects of the case that require further exploration, such as the accused's mental state at the time of the incident or any explanations for his actions, these are matters appropriately addressed during the defense case.



21. It is crucial to note that at this juncture, the court is not making a conclusive determination as to whether the prosecution has proven its case beyond reasonable doubt. Rather, the question is whether the evidence as presented, if believed and left uncontroverted, could lawfully sustain a conviction. I am satisfied that this threshold has been met.
22. I am mindful of the caution articulated in *Festo Wandera Mukando vs. The Republic* [1980] KLR 103, regarding the inadvisability of giving extensive reasons for holding that an accused has a case to answer. However, it is sufficient to state that based on the totality of the evidence, a prima facie case has been established.
23. Consequently, I find that the accused, ALI AHMED, has a case to answer on the charge of murder contrary to section 203 as read with section 204 of the *Penal Code*. The accused is hereby called upon to enter his defence in accordance with section 306(2) of the *Criminal Procedure Code*. As to whether the said evidence on record meet the threshold for convicting the accused is a matter that will have to be considered at the end of the trial.
24. Orders accordingly.

**DATED AND SIGNED AT ELDORET THIS 29<sup>TH</sup> DAY OF APRIL, 2025**

.....

**R. NYAKUNDI**

**JUDGE**

