



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Wachira (Criminal Case E008 of 2021)
[2025] KEHC 11775 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11775 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CRIMINAL CASE E008 OF 2021
CM KARIUKI, J
JULY 31, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

PAUL JORAM WACHIRA ACCUSED

RULING

Introduction

1. The accused person, Paul Joram Wachira, is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on 17th May 2021, at Narok Township, Narok North Sub-County within Narok County, the accused murdered Joseph Wachira.
2. The accused has pleaded not guilty, and the matter has proceeded to full trial. The prosecution called six (6) witnesses in support of its case. The court must now determine whether a prima facie case has been established under Section 306(1) of the Criminal Procedure Code sufficient to put the accused on his defence.

2. Summary of Prosecution Evidence

3. PW1 – William Mwiruri Kibiko, the father of the deceased, testified that DCI notified him that his son, Joseph Wachira, had died. He identified the body at Narok Mortuary and witnessed the post-mortem, which showed injuries at the back of the head.
4. PW2 – Dr. Mohammed Abdi Noor, a medical officer, produced the post-mortem report prepared by Dr. Misoi (now transferred), which found that the deceased suffered a sharp force injury to the forehead, penetrating the skull and causing intracranial hemorrhage, leading to death. He concluded that the death was consistent with intracranial hemorrhage in the blood secondary to homicide.



5. PW3 – PC Robert Njagi, PW4 – PC Fred Orono, and PW5 – Sgt. Joshua Kyalo, all testified that on 24th May 2021, they were directed by the OCS to bring in the accused, Paul Wachira, who was the proprietor of Kandas Bar & Restaurant, for questioning. He accompanied them voluntarily to the station. They confirmed that he was the person arrested.
6. PW6 – Detective Eric Owuor, the investigating officer, testified that the deceased worked at Kandas Bar, and on the material day, he went there drunk and demanding Kshs. 20 from his employer, the accused. A confrontation ensued, and the accused allegedly pushed the deceased out of the premises, causing him to fall and suffer head injuries. He was rushed to the hospital, where he died while receiving treatment. PW6 relied on witness statements and the post-mortem report but did not personally witness the incident. He testified that there were civilian witnesses who had recounted that the deceased was drunk, pushed, and fell, sustaining fatal injuries. However, these civilian witnesses declined to testify in court, reportedly citing coercion during the statement-recording process.

3. Directions of the court

7. The accused person opted to file written submissions.

4. Defence Submissions on No Case to Answer

8. At the close of the prosecution’s case, the accused, through his advocate, submitted that the evidence presented failed to establish a prima facie case against him. Counsel argued that the prosecution failed to establish a prima facie case against the accused. It was submitted that the absence of credible, direct evidence, and the prosecution’s reliance on police witnesses who neither witnessed the event nor presented tangible forensic evidence rendered the case fatally defective. The defence cited several authorities, including Benjamin Brown Olenja v Republic, where the court held that the reliability of evidence is crucial and that coerced or unreliable statements cannot form the basis of a conviction. Republic v Musau & Another (Murder Case 72 of 2023), where the accused were acquitted due to insufficient evidence and lack of direct linkage to the crime. Francis Karioko Muruatetu & Another v Republic, which underscores that for a murder conviction, malice aforethought must be proved beyond reasonable doubt. Republic v Mwendwa & 3 Others (Criminal Case 19 of 2020), where the court reiterated that all elements of the offence, including the malice aforethought, must be established.

5. Analysis And Determination.

9. The test for determining whether an accused has a case to answer was well articulated in the case of Ramanlal Trambaklal Bhatt v R (1957) E.A. 332, where the court stated:

“A prima facie case is 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.”

10. This position was restated in Republic v Samuel Komba Mwaura [2021] eKLR and more recently in Republic v Kipkering Arap Koske & Another (1949) 16 EACA 135, which emphasized that circumstantial evidence must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.
11. The Court is therefore not required at this stage to determine the credibility of the witnesses or the strength of the prosecution’s case. It must only determine whether the evidence on record discloses a prima facie case.
12. Having considered the evidence presented by the prosecution and the submissions of the defence, this Court finds that the prosecution has not established a prima facie case against the accused to warrant



him being put on his defence. The evidence led is entirely circumstantial, unsupported by any credible eye-witness account, forensic analysis, or objective linkage between the accused and the offence. The civilian witnesses, who may have shed light on the matter, were not called to testify, and the court cannot rely on second-hand accounts from investigating officers to infer culpability.

- I. In light of the foregoing, I find that the accused person, Paul Joram Wachira, has no case to answer within the meaning of Section 306(1) of the Criminal Procedure Code. He is accordingly acquitted of the charge of murder. He shall be set at liberty forthwith unless otherwise lawfully held.
- II. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS
31ST DAY OF JULY 2025**

CHARLES KARIUKI

JUDGE

