



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Ali & 2 others (Criminal Case E002 of 2024)  
[2025] KEHC 11534 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11534 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MANDERA  
CRIMINAL CASE E002 OF 2024  
JN ONYIEGO, J  
JULY 30, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ABDIWAHAB NOOR ALI ..... 1<sup>ST</sup> ACCUSED**

**ABDIRAHAMAN ADAN IBRAHIM ..... 2<sup>ND</sup> ACCUSED**

**YAHYA MAALIM ABDISHAKUR ..... 3<sup>RD</sup> ACCUSED**

**RULING**

1. The accused persons herein are charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Particulars of the offence are that on 20-09-2024 between 0200 hrs and 0300 hours at Kamor Location within Mandera East Sub-County, Mandera County, they jointly murdered Ahmed Hajjow aAhmed. Having pleaded not guilty, the case proceeded to full trial with the prosecution calling ten [10] witnesses in support of its case thus inviting the court to make a finding whether the accused ought to be put on his defence or not.
2. At the close of the prosecution case, Mr. Nyipolo counsel for the accused made a one sentence oral submission contending that prosecution had not established a prima facie case to warrant accused two and three put on their defence as nobody mentioned them in connection with the offence. Prosecution entirely relied on the prosecution's case.
3. At this stage, this court is duty bound to make a finding on whether prosecution has established a prima facie case to put the accused on their defence.
4. Section 306 of the *Criminal Procedure Code* Cap 75 Laws of Kenya does provide that, this court has a duty, upon close of the prosecution's case, to make a ruling or a decision on whether an accused person has a case to answer or not. Under section 306[1], when the evidence of the witnesses for the



prosecution has been concluded and the court is of the opinion that there is no evidence that the accused person committed the offence, it should, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.

5. Under section 306[2] on the other hand, when the evidence of the witnesses for the prosecution has been concluded and the court is of the opinion that there is evidence that the accused person committed the offence, the court should proceed to put the accused on his defence.
6. Under section 211 of the *Criminal Procedure Code*, a prima facie case is 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. [See *Ramanlal Trambaklal Bhatt v R* [1957] E.A 332 at 334 and 335].
7. However, it is trite that, where the court is not acquitting the accused person at the close of prosecution's case, there is no need for a reasoned ruling for a case to answer. Reasons should only be given where the submission of a no case to answer by the accused is upheld and the accused is to be acquitted. [See *Festo Wandera Mukando v Republic* [1980] KLR 103].
8. Briefly, on 19.09.2024 at 7.00pm, Hassan Mohamed Hussein[pw1] he was with Aborsa at the home of Juniah chewing miraa. At about 10.30 pm, they were joined by Abdiwahab alias Falcao [accused 1] and Abdirahaman alias mane [accused 2].At 11.00pm, Mane called Mankiso[ deceased]. Shortly, the deceased appeared in company of Yaya nick name for accused three.
9. While chewing miraa, the deceased noticed that accused 1 and 2 were playing some game using Jamhuri's phone. He demanded to know where Jamhuri was as he owed him some money. Accused 1 and 2 told him that Jamhuri was a sleep. Consequently, the deceased grabbed the phone in question and a fight ensued. As a result, he [pw1] ordered them to leave the house. Shortly, a lady known as Fatuma approached him thus informing him that there were people fighting in the next plot.
10. It was his testimony that he proceeded to the scene where there was a fight. At the scene, he found the deceased lying on the ground along the road with his t-shirt soaked in blood. Upon observation, he noticed that the deceased had a stab wound on the chest. He then made a report to the police. According to him, he did not know what transpired after the deceased left the house where they were chewing miraa.
11. On cross examination, he stated that it was Falcao [accused 1] who had Jamhuri's phone which the deceased grabbed.
12. Pw2 Fatuma Nunow was on the night of 20-9-2024 sleeping in her house when at 300am she heard people screaming. When she went to see using her phone light, she saw somebody lying on the ground on the road side with two people searching him. While still at the scene, she saw another man carrying water in a jericin trying to give the man on the ground water to drink. She then heard one mane [accused 2] asking another man known as Falcao [accused 1] why he had stabbed the man on the ground. Subsequently, she informed pw1 what had transpired and on going back to the scene, they found the deceased had died.
13. On cross examination, she stated that one manealso accused Falcao of stabbing the deceased. That when the police arrived, she named accused 1 and 2 as the people whom she found at the scene.
14. PW3 Abushirah Mohamed was in her house on 20-09-2024 sleeping when two people knocked her door claiming that they were from digging a grave of their relative who had been killed. In response, her and her two sons proceeded to the scene where they found somebody lying on the ground while death. She later witnessed postmortem done.



15. Pw4, was on 20-09-2024 called by one Abshirah [pw3] who informed him that her son had been killed. He accompanied pw3 to the scene where he saw the deceased lying dead on the ground with stab wound on the chest. He did not know what transpired.
16. P5 Abdiwahab Biriq stated that on the 19-09-2024, he was chewing miraa in company of Yaya [accused 3] and one Zacharia at a place known as Bura Kamor. At 11.00 pm, he left for his home leaving Yaya and Zacharia chewing miraa. While at home, at 200am, he heard a lot of noise from the neighbour's place. When he went to find out on what was happening, they proceeded towards the direction where the noise was coming from. On the way, he met one Jimale and Abdiqadir who informed them somebody had been killed and that he had seen Yaya running away. On cross examination, he said that he did not witness the attack on the deceased.
17. Pw6, Feisal Hajio brother to the deceased stated that on 19-09-2024 at 9.00 pm he was with his brothers Abdishakur and the deceased when they fought with some people. He however went home and later got information that his brother had been stabbed. He visited the scene and found his brother dead. He confirmed that there was a stab wound on the chest.
18. Pw7 Abdiqadir Bulle national police reservist stated that on 19-09-2024 he was at a place known as parliament with the deceased, Matan and Jimale chewing miraa. That at some point he left them and went home. He later heard that the deceased had died.
19. Pw8, the investigating officer stated that on 19.09.2024, he was at the police lines when Cpl Macharia called him and requested that they meet at the gate with the DCIO. Together they proceeded to the scene of murder where they found a dead male adult lying on the ground with stab wounds on the chest. They took the body to the mortuary and later on had the postmortem done.
20. It was his testimony that upon investigation, he found out that it was one falcau [accused 1] who had stabbed the deceased after quarrelling over a phone. That the 2<sup>nd</sup> and 3<sup>rd</sup> accused tried to give the deceased 1<sup>st</sup> aid using water. Later, they learnt that accused 1 and 2 had fled to Ethiopia. Arrangements were made in conjunction with Ethiopian authorities who assisted the two being arrested and returned back to Kenya. On cross examination, he stated that the 2<sup>nd</sup> and 3<sup>rd</sup> accused were not involved in the altercation with the deceased.
21. Pw9 scenes of crime merely processed photographs of the deceased person but failed to produce the same as he was not the one who took them.
22. Pw 10 Doctor Abdullahi Makheir performed postmortem examination and formed the opinion that the cause of death was bleeding secondary to a penetrating wound.
23. I have considered the prosecution evidence herein and oral submissions by the defence. As stated elsewhere in this ruling, the duty of this court is to find whether the prosecution has established a prima facie case to warrant accused being put on their defence.
24. The accused persons herein are facing the offence of murder C/S to Section 203 of the *Penal Code* which provides that: "Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.". Article 26[2] of *the Constitution* of Kenya provides that a person shall not be deprived of life intentionally, except to the extent authorized by *the Constitution* or written law.
25. To establish the offence of murder to the required degree, prosecution's evidence must prove beyond reasonable doubt the following elements: that the death of the deceased occurred; the cause of the said



death; the death was caused by unlawful act or omission; that the accused committed the unlawful act which caused the death of the deceased and; that the accused had malice afore thought.

26. In the case of Republic v W.O.O. [2020] eKLR [Migori High Court Criminal Appeal No. 26 of 2017] the elements of murder were restated, as guided by the Court of Appeal in the case of Anthony Ndegwa Ngari v Republic [2014] eKLR, as follows: “For the offence of murder to be proved, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are:[a] the death of the deceased and the cause of that death;[b] that the accused committed the unlawful act which caused the death of the deceased and[c]that the Accused had the malice aforethought.”
27. Before this court is the evidence that the deceased was stabbed on the chest with a knife. This fact was confirmed by all prosecution witnesses who saw the body at the scene and also the doctor [pw9] who performed the postmortem examination confirming that the deceased died as a result of bleeding due to a penetrating wound. I have no doubt that the deceased died and that the cause of death was a stab wound which was an unlawful act.
28. Who committed the unlawful act? Pw1 told the court how the deceased grabbed a phone belonging to Jamhuri from accused one. That as a result, a scuffle ensued leading to pw1 ordering them to leave the house where they were. As the deceased disappeared with the phone, accused persons followed him. He later heard that the deceased had died. He did not see who stabbed him.
29. Pw2 one Fatuma who responded to the noise from the scene went there and found one mane and another man giving the deceased first aid. That she heard mane and the other man accusing Falcau of stabbing Mankiso [deceased]. Pw3-pw7 did not see what happened. The investigating officer stated that it was accused one who fought with the deceased and from his investigation it was accused 1 who stabbed the deceased.
30. From the evidence, accused 2<sup>nd</sup> and 3 were only involved in giving the deceased 1<sup>st</sup> aid. They have been exonerated by the investigating officer. It would appear like he charged the two out of public pressure. Nobody saw the two stab the deceased. However, from circumstantial evidence and more particularly pw2’s evidence, there is a prima facie case established against accused 1.
31. Accordingly, I do not find anything to connect accused 2 and 3 with the offence. To that extent, they are acquitted under Section 306 of the CPC for lack of a prima facie case against them. Accused 2 and 3 are set free unless otherwise lawfully held.
32. Accused one on the other hand is put on his defence. He shall be at liberty to give sworn testimony in which case he will be subjected to cross examination. Secondly, he can choose to give unsworn testimony in which case he will not be cross examined. Thirdly, he can opt to keep quiet. In either option, he shall be at liberty to call witnesses.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 30<sup>TH</sup> DAY OF JULY 2025**

**J. N. ONYIEGO**

**JUDGE**

