



Director of Public Prosecution v Atumbwa & 2 others (Criminal Case E124 of 2021) [2025] KEHC 11197 (KLR) (29 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11197 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E124 OF 2021
S MBUNGI, J
JULY 29, 2025**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION REPUBLIC

AND

EVANS ATUFA ALIAS ATUMBWA 1ST ACCUSED

SAMUEL KARIUKI KIMEMIA ALIAS PATRICK SUJI 2ND ACCUSED

WELLINGTON AMOS 3RD ACCUSED

RULING

1. The accused herein 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 were that on the night of 19th April, 2020 at 1940 hours at Emulomonyi village, Kakamega central sub- county within Kakamega county. The accused persons murdered Kepher Tsuma.
2. A plea of not guilty was entered and the prosecution called out seven witnesses who testified against the accused persons.
3. The question for determination is whether there is a case to answer based on the evidence presented by the prosecution.
4. The burden of proof lies with the prosecution to establish a prima facie case against the accused persons. The evidence must be sufficient to enable the court to reasonably conclude that there is need to call upon the accused to tender the defense.
5. Section 306(1) of the *Criminal Procedure Code* states that :

“When the evidence of the witness for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any of the several accused committed



the offence shall after hearing, if necessary, any arguments which the advocate for the prosecution or defense may desire to submit, record a finding if not guilty.”

6. A prima facie case is defined in *Republic v. Abdi Ibrahim Owl* [2013] eKLR as evidence that is sufficient to establish a fact or raise a presumption unless disproved or rebutted. Furthermore, in *Ronald Nyaga Kiaru v. Republic* [2018] eKLR, it was emphasized that a prima facie case exists if the evidence presented could lead a reasonable tribunal to convict.
7. Based on the evidence presented, I find that the prosecution has established a sufficient basis to conclude that a case exists against the accused persons. The testimonies and medical reports provide a reasonable foundation for believing that the accused may have played a role in the death of Kephher Tsuma.
8. Therefore, I conclude that there is a case to answer. The accused persons shall be called upon to respond to the charges against them. This position was enunciated in *Festo Wandera mukando v Republic* [1980] KLR 103, where it was held thus:

“...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 an extreme case, may require an appellate court to set aside an otherwise sound judgement.

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 of the case or the counts concerned.”
9. Having considered the evidence of the prosecution witnesses and without delving deep into the merits thereof as that would prejudice the accused persons herein, I am satisfied that a prima facie case has been established against the accused persons to warrant them to be placed on their defence in terms of Section 306 as read with section 307 of the Criminal Procedure Code
10. The accused shall be informed of their rights under Article 50(2)(i)(k) and (l) of the *Constitution* as read with section 306(2) of the *Criminal Procedure Code* before the onset of the defense case.
11. Defence hearing on 21.10.2025.

Right of Appeal 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF JULY, 2025.

S.N MBUNGI

JUDGE

In the presence of:-

Court Assistant- Fred Owegi

Ms Andeya holding brief for Ms Amasakha for 4th Accused and Ms Magama for the other accused persons.

