



**Republic v Olweny & another (Criminal Case E012 of 2020)  
[2024] KEHC 8311 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 8311 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CRIMINAL CASE E012 OF 2020  
KW KIARIE, J  
MARCH 19, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ADAMS OGWENO OLWENY ..... 1<sup>ST</sup> ACCUSED**

**KENNEDY JUMA MUNA ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. Adams Ogweno Olweny and Kennedy Juma Muna are charged with an offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. The particulars of the offence are that on the 14<sup>th</sup> day of October 2020, at the Arujo sub-location in Homa Bay Sub County within Homa Bay County murdered, Jeremiah Juma Okello.
3. The deceased was a boda-boda rider. He was attacked by people who posed as police officers. He was ferrying three pillion passengers. The passengers were called as witnesses, and each testified that they were not able to identify any of the attackers, though they said they had dressed in what appeared to be police uniforms. It was dark, and the attackers were wearing masks. They also switched off the motorbike lights immediately after the rider stopped.
4. Corporal Johnson Ponge (PW5) testified that members of the public arrested the accused while they were fighting at the bus stage. This, without any other evidence, cannot be the basis for charging them with the offence of murder.
5. After considering the evidence on record, the question is whether the prosecution has established a prima facie case against the accused person. In the [Black's Law Dictionary](#), 10th Edition, prima facie case is defined as follows:



*Prima facie* case. (1805) I. The establishment of a legally required rebuttable presumption. 2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.

6. The Court of Appeal in the case of *Ramanlal Trambaklal Bhatt v. R* [1957] E.A 332 at 334 and 335 defined prima facie case as follows:

It 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.

7. Article 50 (2) (i) of [Constitution](#) of Kenya provides:

(2) Every accused person has the right to a fair trial, which includes the right—

(i) to remain silent, and not to testify during the proceedings;

In the instant case, if the accused opts to exercise their constitutional right, I cannot enter a conviction based on the evidence on record. Therefore, this means that the prosecution has failed to establish a *prima facie* case against each of them. I accordingly acquit each accused of the offence of murder under section 306 (1) of the [Criminal Procedure Code](#). Each accused is set at liberty unless otherwise lawfully held.

**DELIVERED AND SIGNED AT HOMA BAY THIS 19<sup>TH</sup> DAY OF MARCH 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

