



**Republic v Kwanda & another (Criminal Case E006 of 2021)
[2024] KEHC 4113 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4113 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E006 OF 2021**

DK KEMEL, J

APRIL 29, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

JACOB NALIANYA KWANDA 1ST ACCUSED

PAUL WANJALA ALIAS MUCHE 2ND ACCUSED

RULING

1. The accused persons herein Jacob Nalianya Kwanda and Paul Wanjala alias Muche have been charged with an offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars are that on the 2nd Day of March, 2022 at Nawanga village of Mbakalo Location in Bungoma North Sub – County within Bungoma County, jointly with another not before court murdered Zablon Khisa Wekesa.
2. The prosecution called nine witnesses in support of its case.
3. At the close of the prosecution’s case, learned counsels for the parties herein opted not to tender submissions on the issue of whether a *prima facie* case has been made by the prosecution at this stage of the proceedings to warrant the accused persons to be called upon to tender their defence.
4. I have carefully considered the evidence of the nine witnesses availed by the prosecution and find that the accused persons were placed at the scene of crime. It transpired from the evidence that the 1st accused herein had married one of the daughters of the deceased and that they lived nearby and that earlier in the day the two had had some disagreement forcing the 1st accused’s wife to go to her parents’ home and left her young child with the 1st accused but she later arranged with her family members to go back and fetch the child. It seems an altercation ensued but they managed to snatch the child from the 1st accused. The 1st accused and his co-accused together with another person who is still at large stormed the home of the deceased and that a fight ensued which led to the deceased sustaining



severe injuries and that the deceased's home was burnt down. The deceased was rushed to Naitiri health centre but passed on afterwards. The body was later examined by the pathologist Dr Reuben Nyongesa Kere (Pw8) who formed the opinion that the cause of death was cardio pulmonary arrest due to critical head injury grade three right tibia fibula fracture due to physical assault due to a blunt object. The autopsy report was produced as exhibit two. Both accused were apprehended at the scene the same day and that the 1st accused was found wearing a bloodstained t-shirt. Consequently, in the absence of any explanation to the contrary from the defence, I find the evidence so far adduced by the prosecution's witnesses at this stage of the proceedings has placed the two accused herein at the scene of crime and that they had the opportunity to harm the deceased and that there is reason to believe that they had a hand having been placed at the scene of crime. It is further my finding that were the accused persons to elect to remain silent in defence, the evidence so far tendered is sufficient to sustain a conviction against them. As the accused have been placed at the scene of crime, they must now offer an explanation as to how the deceased met his death.

5. In the result, it is my finding that the prosecution has established a prima facie case against each of the accused persons herein Jacob Nalianya Kwanda and Paul Wanjala alias Muche. I find that they have a case to answer and are now called upon to elect to conduct their defence in accordance with the provisions of section 306(2) of the [Criminal Procedure Code](#).

DATED AND DELIVERED AT BUNGOMA THIS 29TH DAY OF APRIL .2024

D.KEMEI

JUDGE

In the presence of :

Jacob Nalianya 1st Accused

Paul Wanjala 2nd Accused

Nabibia for Accused

Miss Kibet for Prosecution

Kizito Court Assistant

