



**Republic v Hesborn (Criminal Case E036 of 2021)  
[2024] KEHC 4233 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4233 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL CASE E036 OF 2021**

**DK KEMEL, J  
APRIL 29, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**MIKE NAKHISA MAYEKHU ALIAS HESBORN ..... ACCUSED**

**RULING**

1. The accused herein Mike Nakhisa Mayekhu Alias Hesborn has 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 29<sup>th</sup> August, 2023 at Bunang’eni village, Sirende sub location, Sirende location in Webuye West sub county within Bungoma County, he murdered Jotham Wekesa Waswa.
2. The prosecution called eight witnesses in support of its case.
3. At the close of the prosecution’s case, learned counsel for the defence submitted that the prosecution has not established a prima facie case against the accused whereas counsel for the prosecution opted to rely on the evidence so far adduced. At this stage of the proceedings, the prosecution is under a duty to establish a prima facie case against the accused so as to warrant the accused to be called upon to elect to make a defence.
4. I have carefully considered the evidence of the seven witnesses and find that the accused was placed at the scene of crime. He went to a certain widow’s house (Pw1) and fought with the deceased who had inherited her. Apparently, the accused had designs for the said widow because he claimed that she was his girlfriend. The accused hit the deceased with a stick on the head and who fell down unconscious. The deceased was escorted to hospital where he died. The accused was apprehended while a post mortem examination was conducted by Dr Edward Wafula Simiyu (Pw8) who formed the opinion that the cause of death was intercranial hemorrhage due to blunt trauma. He produced the autopsy report as exhibit two. It transpired from the evidence that the deceased was at the house of a certain widow



(Pw1) when the accused turned up while appearing drunk but was escorted out of the said home only to return back and pounce on the deceased and hit him on the head wherein the deceased fell down unconscious. The other witnesses namely Pw2, Pw3 and Pw4 were all at the scene and witnessed the incident. Consequently, I find that in the absence of any explanation to the contrary from the defence, the evidence so far tendered by the prosecution at this stage of the proceedings has placed the accused at the scene of crime and that he had the opportunity to harm the deceased and hence there is reason to believe that he had a hand in the death of the deceased. I further find that were the accused to elect to remain silent in defence, the evidence so far tendered is sufficient to sustain a conviction against him. As the accused was placed at the scene of crime, he 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 the accused herein Mike Nakhisa Mayekhu. I find that he has a case to answer and is now called upon to elect to conduct his defence in accordance with the provisions of section 306(2) of the Criminal Procedure Code.

**DATED AND DELIVERED AT BUNGOMA THIS 29<sup>TH</sup> DAY OF APRIL 2024**

**D.KEMEI**

**JUDGE**

In the presence of:

Mike Nakhisa Accused

Sabwami for Wattangah for Accused

Miss Kibet for Prosecution

Kizito Court Assistant

