

KENYA / JUDGMENT

Republic v Kamau [2026] KEHC 11181 (KLR)

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COURT

High Court

BEFORE

JN Njagi

CASE / FILE NUMBER

Criminal Case E003 of 2024

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Republic v Kamau (Criminal Case E003 of 2024) [2026] KEHC 11181 (KLR) (21 July 2026) (Ruling)

Neutral citation:

[2026] KEHC 11181 (KLR)

Republic of Kenya

In the High Court at Garsen

Criminal Case E003 of 2024

JN Njagi, J

July 21, 2026

Between

Republic

Prosecution

and

Samuel Nage Kamau

Accused

Ruling

- 1.The accused is facing a charge of murder contrary to section 203 as read with 204 of the Penal Code. The particulars of the offence are that on the 11th February 2024 at 1520 hours within Mkeketoni township in Lamu East Sub- County within Lamu County, he murdered Mbui Mruche (herein referred to as the deceased).
- 2.The prosecution called 6 witnesses in the case and closed its case. This court is now called upon to determine whether the prosecution has established a prima facie case as to warrant the accused being placed to his defence.
- 3.The case for the prosecution is that the deceased was operating a barber shop at Mpeketoni township. That on the material day at around 3pm a friend to the deceased PW1 was at Mpetoni towship when he found a group of people gathered. He saw the deceased lying on the ground with an injury on the right side of the chest. The deceased told him that he had been beaten. He put him on a motor cycle and took him to Mpeketoni sub county hospital. The medical personnel started to attend to him. PW1 informed the wife of the deceased PW3. She went to the Hospital. After some time they were informed the deceased he had died.
- 4.The death of the deceased was reported at Mpeketoni police station. PC Peter Macharia PW5 of DCI Mpeketoni was instructed by his in-charge to investigate the case. He visited Mpeketoni sub count hospital and found the body of the deceased in the mortgue. It had a wound on the chest. He visited the scene of the incident and found the scene to have been in the barber shop of a person called James Kabuu. He noted blood stains on the floor of the barber shop and on a table outside the barber shop. He went back to the police station where he found the Accused locked up. He was said to have been arrested by members of the public and taken to the police station. He went back to the barber shop where James Kabuu handed over to him a screw driver that was blood stained.
- 5.Members of the family of the deceased PW2 and PW4 received the report. On the 12/2/2024 they went to the police station and afterwards viewed the body at the hospital. On the following day a post mortem was conducted on the body by a doctor at Mpeketoni sub county hospital and released to them for burial.
- 6.The doctor who performed the post mortem, Dr, Bahja, was unavailable to testify and his report was produced in court by Dr. Marion Muli PW6 of Mpeketoni sub county hospital. It was the evidence of Dr. Muli that the examining doctor found the body with a single stab wound on the left side of the chest. He formed the opinion that the cause of death was due to haemorrhagic shock secondary to massive blood loss as well as due to respiratory failure secondary to open pneumothorax (lack of oxygen) due to stab wound. The doctor took hair clippings from the scalp, hand and feet nails that the investigating officer PW5 took the said items to the government chemist laboratory at Mombasa. PW5 also escorted the accused to the government chemist where his blood samples were taken for comparison with the blood that was on the screw driver. The results of analysis and examination were however not produced in court.

7. During the hearing the doctor PW6 produced the post mortem report as exhibit, P.Exh.1.

8. The above being the evidence that was adduced before the court, the issue for determination at this stage is whether the prosecution has established a prima facie case as to warrant the accused being placed to his defence.

9. In the Black's Law Dictionary, 10th Edition prima facie case is defined as follows: i. 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.

10. 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: i. "Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one "which on full consideration might possibly be thought sufficient to sustain a conviction." This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is "some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence". A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence..... 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."

11. The investigating officer PW5 suspected that the deceased was stabbed with a screw driver that was given to him by one James Kabuu. The said person however never testified in court and the screw driver was not produced in court. The results from the government analyst were not produced in court. No witness turned up in court to testify as to the person who stabbed the deceased. More so the members of the public who arrested the accused and took him to the police station did not testify in the case. The sum total of all this evidence is that it is not known upto now why the accused was charged with the offence of murder of the deceased herein. Such evidence as produced before the court can hardly be said to be sufficient to put an accused person to his defence.

12. Consequently, it is my finding that the prosecution has not established a prima facie case as to require the accused to be placed to his defence. The accused has no case to answer and is acquitted under section 306 (i) of the Criminal Procedure Code.

DELIVERED, DATED AND SIGNED AT GARSEN THIS 21ST DAY OF JULY 2026J. N. NJAGIJUDGEIn the presence of: Mr Oluoch for Prosecution Mr. Kiponda for Accused Court Assistant – Rahma

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