



**Republic v Githiga (Criminal Case 17 of 2019)
[2024] KEHC 13711 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 13711 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL CASE 17 OF 2019
SN MUTUKU, J
SEPTEMBER 26, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JIMMY NJENGA GITHIGA ACCUSED

RULING

1. Jimmy Njenga Githiga, the accused, is charged with murder contrary to section 203 read with section 204 of the Penal Code. The particulars of the charge are that on 5th August 2019 at Enmanyatta Sub-location, Kibiko B in Kajiado North Sub-County within Kajiado County, jointly with others not before the court, he murdered Joseph Muria Githiga.
2. The accused pleaded not guilty to the charge.
3. The prosecution called a total of twelve (12) witnesses to testify against the accused. What comes out of their evidence is that the deceased and the accused are step brothers, born of the same father but different mothers. There seems to have been a family dispute about the property left behind by their late father, especially touching on a plot in Ngong Town where the wife of the deceased, Loise Wanjiku Muria, PW1, operated her business.
4. According to the evidence on record, PW1 left her home in the morning on 5th August 2019 to go to her business in Ngong Town. She was escorted by the deceased, her husband. The deceased returned home. The deceased did not return to PW1's business that day as was the practice. PW1 was concerned. She returned home around 8.30pm that day. She arrived home the same time with her son, James Mbai Muria, PW2. They were surprised to see the house in darkness with no security lights on. PW1 called her husband but there was no answer.
5. The deceased was found lying on the ground at the verandah near the kitchen door. He was dead and his neck had been severed almost completely. They screamed, attracting their neighbours and relatives.



The matter was reported to the police who came to the scene. The body was moved to the mortuary. A postmortem was conducted on the body on 12th August 2019 by Dr. David Kaburu who formed the opinion that the deceased died due to severe bleeding due to sharp force trauma.

6. The accused was arrested and charged with this offence.
7. At this stage of the trial, this court is required to analyze and evaluate the evidence to determine if the prosecution has made out a prima facie case to warrant the accused to defend himself. Section 306 (2) of the Criminal Procedure Code provides that:

When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.

8. The accused has, through his legal counsel, submitted that there is no case to answer on the part of the accused for reasons that there is no direct evidence pointing to the accused as the perpetrator; that no evidence has been adduced placing the accused at the scene of the crime and that the prosecution is basing its case on circumstantial evidence and evidence based on suspicion. They cited several cases to support their submissions including Pon v Republic (2019) eKLR and Joan Chebichii Sawe v Republic [2003] eKLR.
9. I have considered the evidence and the provisions of section 306(2) of the Criminal Procedure Code. The majority of the witnesses are family members of the deceased and the accused. From their evidence, there has been a long-standing dispute over some of the property left behind by their late father. Evidence shows implicates the accused that he had threatened to kill the deceased. I have arrived at the conclusion that the evidence has implicated the accused, and it is prudent to place him on his defence to adduce evidence in his defence.
10. Consequently, it is my finding that the accused has a case to answer. He is at liberty to adduce evidence in his defence and to call witnesses in his favour. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 26TH SEPTEMBER 2024.

S. N. MUTUKU

JUDGE

