



**Republic v Munyingi (Criminal Case 19 of 2015)  
[2023] KEHC 21600 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21600 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE 19 OF 2015  
RM MWONGO, J  
JULY 28, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**PETER KARANJA MUNYINGI ..... ACCUSED**

**RULING**

1. The accused person is charged with the murder of Agnes Mwinja Mputhia contrary to Section 203 as read with Section 204 of the Kenya [Penal Code](#). the particulars of the offence are that on October 30, 2015 at Kamanoru Village in South Ngariama location within Kirinyaga County murdered Agnes Mwinja Mputhia.
2. The accused took plea on November 19, 2015 and pleaded not guilty. The prosecution availed ten witnesses against the accused. Thereafter and in accordance with section 210 of the [Criminal Procedure Code](#) the parties filed submissions on whether the prosecution has made out a case against the accused sufficiently to require him to make a defence.
3. Section 210 of the Criminal Procedure Code provides:  

' If at the close of the evidence in support of the charge, and after hearing such summing up, submission or argument as the prosecutor and the accused person or his advocate may wish to put forward, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him.'
4. The standard to be established by the prosecution is that there is a prima facie case made out against the accused. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court of law to return a guilty verdict even if the accused opts to remain silent.



5. In *Ramanlal Trambaklal Bhatt v R* [1957] E.A 332 at 335, the court stated 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.'
6. This ruling examines and analyses the evidence adduced by the prosecution to establish whether the accused should be put on his defence.
7. PW1 Samuel Kimwele Kimanzi was put on the witness stand but was stepped down by the prosecution since he had not recorded a statement with the police. He did not testify.
8. PW2 Samuel Karimi Kibicho testified that he stayed at Kerugoya but worked as a grounds man at Murang'a Teachers College and that the accused used to stay at his home in South Ngariama. He said the accused used to do casual jobs in his farm and he gave him a one room timber house but he himself did not live on the farm.
9. He said that on October 30, 2015, he decided to go to Kerugoya and take miraa to the accused so that he could plant it in his farm. He arrived at the farm at around 10.30 pm and removed the miraa from the vehicle. He then called the accused to inform him. As he walked to the door, he discovered the deceased's body with the head wrapped in a green paper bag and some net material.
10. Using his phone torch, he checked and saw that it was not the accused. He called the accused who did not answer. Inside the house he noticed that a radio was on. He called his driver who had driven off, and told him to return because he had found a body and did not know what was going on. He, the driver said he would go to his shamba and that PW1 should inform the neighbours.
11. PW1 went and told a neighbour called Grace. She informed the Sub Area, Mr Mugo, who came shortly after. He returned to the scene with neighbours and that is when he met the accused in the compound. On asking the accused where he had been, he responded that he was looking for his wife. PW1 told him his wife was at the door, to which the accused responded that his wife had threatened to go and jump in the river
12. It was then that the driver came back and they decided to go and report to the police. They met some on patrol who accompanied them to the scene and saw the body, which they carried with them.
13. In cross examination, PW 1 stated that he had known the deceased, who was not a talkative person as the wife of the accused. He was not aware whether they had any disputes. He confirmed that he looked at the deceased under the torch light he did not know she was the accused's wife until the face was uncovered by the CID officers.
14. The testimony ended without re-examination.
15. PW-3 David Mugo Mwai said he remembered being called by PW-2 (Samuel Karimi Kibicho) on October 30, 2015 who informed him that he had stumbled on a dead body. It was his testimony that he rushed to the scene where he saw the deceased's body lying down with the legs facing the door and the head covered with a polythene bag. He did not know the accused's wife.
16. That he cautioned people not to tamper with the body until the Police arrived. He testified that he called the Police who came and that he met the accused at the scene.
17. When the police arrived and had seen the body, he entered the house with them. In it he saw a mosquito net and a lamp. Outside, he asked Karanja what had happened, and he said he did not know.



18. PW4 Francis Kiteme Muinga testified that he was from Kitui and that the deceased Agnes Awinya Mputhia was his wife with whom he had 5 children. He said he did not know the accused person. He said they used to stay in Mwingi with the deceased but she later left with their children and went to work in Embu and she used to go home on occasion. He said he came to know of her demise after his brother who was working in Garissa was called by the police and informed him. He said he went to the mortuary and saw the body and he confirmed she was the one. Later, a postmortem was conducted and the body was later released to him for burial.
19. During cross-examination, he stated that the deceased was his wife, and not the wife of the accused in the dock. In re-examination he said he was not aware whether she was living with a man or not.
20. PW5 Musili Francis Muinga Kiteme testified that he was 29 years old; that he knew the deceased Agnes since she was his mother though he did not know the accused person. He said they were 5 siblings but his mother left him when he was 6 months old and his relatives from his father's side took care of him. He said his mother left home and went to Embu.
21. He said on October 31, 2015 when he was working in Garissa, a telephone call was made at his grandmother's home where he was told his mother had died. He said he met his mother when he was in class 8 and came to know her. He said he went to Embu then Wang'uru police station and later went to Embu Hospital mortuary together with his grandmother and father and they identified the body and a postmortem was conducted after which the body was released to them.
22. During cross-examination, PW5 said he just received information that his mother was dead and he did not know how she died.
23. PW6 - Mutei Kimwele testified that the deceased Agnes Mwinja Mputhia was her daughter. She was married to Kileme but she left the home of her husband and children behind and went to stay in Embu and left her last born when he was very young. PW6 said she came to know the deceased lived in Mbeere when she was brought news of her death. She said her grandson Kimwele was the one who reported that her daughter had died and it was on November 9, 2015 when she received the call.
24. She said they went with Kimwele to Embu, then to Wang'uru police station and later went to the mortuary to identify the body and she confirmed the body was that of her daughter Agnes Mwinja Mputhia; the body was then released to them for burial after postmortem was done. She said that the deceased had been murdered and the suspect had been arrested but she did not know the suspect.
25. During cross-examination, PW6 said she was told the deceased was murdered and that is all she knew.
26. PW- 7 No 224424 APC Chevas Momanyi testified that on October 30, 2015 at about 2200 hrs, while in the company of another were stopped by members of the public who informed them that they were on their way to the Police to report a murder incident and indeed led them to the scene. It was testimony that he saw the deceased head covered with a polythene bag with some rope on the neck. That they secured the scene until the Police come from Wang'uru and they handed over.
27. He stated that the accused (Peter Karanja) was with members of the public when he met them and he confirmed he had lived with the deceased for a period of two years.
28. PW8 - CPL James Muriithi testified that he is a scene of crime officer currently attached at DCC Meru County. He said on October 31, 2015 at around 2.00am, he went to a place called Kamanoru village in South Ngariama where they found a body of a female adult which was outside a residential home. The head was covered with a polythene paper. He said the name of the deceased was Agnes Mwinja Mputhia aged 51 years. He ordered the polythene bag to be removed and saw that the deceased had injuries on the head and blood was oozing from the right eye and mouth. PW8 said they were escorted



to the scene of crime by Investigating Officer CPL Bungei. He said he took 5 photographs as exhibits and they were marked as exhibits 3a-c and the certificate of memo was marked as exhibit 4.

29. There was no cross-examination.
30. PW-9 Dr Rosemary Wangari was the pathologist who testified to the Post Mortem report prepared by her colleague Dr Nyagilo who had gone abroad, and from whom she took over. There was no objection to her giving evidence. She described the injuries on the accused and opined that the deceased died of subdural haemorrhage due to severe blunt force trauma from a blunt object. That she seemed to have been assaulted as she had bruises.
31. PW 10 No 73057 Cpl. Elseba Bungei was the investigating officer. She testified that indeed when she arrived at the scene, the body of the deceased was lying on the ground near the door with her head covered with a green Polythene bag with her neck tied with a piece of mosquito net blue in colour. They were produced as Pexb1 and Pexb 2.
32. The body lay outside with the legs pointing towards the door and the head had visible injuries and appeared swollen. The body seemed to have been dragged to that spot. That when they searched the house, they noticed the Mosquito net rope around the deceased matched the one that was on the bed where the accused and the deceased resided as husband and wife. The mattress on the bed was disarranged and she concluded that there was a struggle.
33. Their investigation revealed that the deceased was pulled from inside the house and left at the door.

#### **Parties' submissions**

34. The prosecution submits that the accused was the perpetrator and occasioned the timely demise of the deceased on the October 30, 2015. He had the intention as both the prosecution witnesses have proved that he lived with the deceased as husband and wife.
35. The deceased was found lying outside their house with her legs facing inside the house and as Pw-10 (Cpl Elseba Bungei) testified, the rope on the deceased neck matched that on their matrimonial bed where the accused lived with no other person.
36. The accused was found at the scene by PW-2 (Simon Karimi Kibicho) but only after the village headman arrived.
37. The prosecution submits that the accused had proper knowledge that the deceased would be harmed or die when he assaulted her before tying her head with the Polythene bag as PW-9 the Doctor stated that the deceased was assaulted as bruises were visible and her head swollen.
38. Section 203 of the Penal Code defines murder in the following terms:

' Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.'
39. The accused submits that the prosecution witnesses confirm that they cannot tell who killed the deceased person. From the evidence adduced, it is not clear who was the perpetrator. PW2 said that the Accused came to the compound when people had gathered and he said he had gone to look for his wife. PW3 & Pw7 said they found the Accused person at the scene of crime together with other members of the public. It is not possible for the accused to have been at the scene if he was the perpetrator, his conscious would not have allowed him stay there.



40. The evidence by the prosecution witnesses is full of contradictions and inconsistencies; PW3 said that inside the house there was no sign of struggle, while PW10 said there was a sign of struggle since the house was disarranged.
41. PW3 said that the deceased's head was covered with a clear paper bag while the other prosecution witnesses talked about a green polythene paper bag.
42. PW7 said he was one of the police officers who were on patrol on the night of October 30, 2015 and he said they found the accused at the scene but never indicated that they arrested him while PW10 said that by the time she arrived at the scene, the accused had already been arrested by officers at P.I police post. Upon the investigating officer being asked why she decided to charge the Accused person, she said that it is because he was the one staying with the deceased. The fact that a person was the one staying with someone then that person dies under mysterious circumstances and is found in the house they were living in is not a sufficient reason to accuse the other person of murder. No evidence has been adduced by all the 10 prosecution witnesses linking the Accused person with the murder.
43. There is no way that the Accused would be the perpetrator and stay at the scene; no circumstantial evidence has been adduced to warrant the accused person to be put to his defence. What there is, is a presumption that if the accused was the one staying with the deceased, then he is the perpetrator. This is an allegation that is not supported by any evidence.
44. It is always for the prosecution, throughout the trial, to prove their case against the accused person. That burden does not shift to the accused person. At this stage of the proceedings, however, the prosecution is not expected to have proved their case against the accused person beyond reasonable doubt. They need to show that a prima facie case has been made out that calls for a response from the accused.
45. In a murder case, the elements that must be proved are as follows:
  - a) That the deceased is dead.
  - b) That his death was due to an unlawful act by the accused
  - c) That in killing the deceased accused had malice aforethought
  - d) That it is beyond per adventure the deceased death was caused by the accused.
46. It is not in dispute that the deceased is dead. The evidence of PW9 the Pathologist, and the postmortem report are sufficient proof of this. The doctor stated that the deceased died due to subdural and epidural hemorrhage due to sever blunt force trauma from a blunt object. That is, she had been assaulted and hit or beaten.
47. As to whether the death is attributable to a wrongful act of the accused, the star witness was PW 2, Samuel Kibichio. His evidence was that when he visited his house where the accused lived, he found the deceased's body lying on the ground near the door, her head covered in a plastic paper and mosquito net fabric, and tied with a rope. The fabric appeared to have been cut from a net which he later saw in the house.
48. The accused was not nearby, and when he finally saw him and asked what had happened, the accused merely stated that his wife had threatened to go and jump in the river. There was no further discussion as to the reasons, nor any attempt to find out what had happened to her.
49. The police during their investigations questioned the accused. He told PW7APC Chevas Momanyi that the previous night he had disagreed with the deceased who he had lived with for two years. the



previous night. The rope and paper bag were produced in court. PW7 also noted from the scene that there had been a struggle. He ruled out suicide.

50. No deeper investigations were done. He was not asked what the disagreement was about, where they were when they disagreed, who else was present at the time of the disagreement, or what he did after the disagreement. No evidence was given as to whether the accused was asked where he was prior to the body being found; nor was he asked when he had last been with the deceased; He was not questioned about the net and how or when it had been cut. The accused's demeanour and composure were not described by any witness to give a hint of whether he was anxious, worried, scared or apprehensive or remorseful.
51. Indeed, no evidence was given concerning the circumstances surrounding the last twenty-four hours of the accused's movements despite the fact that he was being treated as a suspect. In any event he was arrested and charged.
52. None of the other witnesses gave any evidence that was able to link the accused to the deceased, or the events leading to the deceased's death to the accused.
53. In the case of *Republic v Peter Muriuki Mugo [2022] eKLR* Njuguna J held:

' This court's role is to consider the evidence on record and make a determination as to whether the same presents a prima facie case that would warrant this court to call upon the accused person to give his defence. Under section 211 of the Criminal Procedure Code, a prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person.'
54. It is not for the accused person to fill in the gaps in the evidence after the prosecution has concluded its case.
55. The accused properly submits that there cannot be sustained a presumption that if the accused was the one staying with the deceased, then he is the perpetrator. This is an allegation that must be supported by evidence
56. None of the witnesses called gave evidence that did any more that ascertain who the deceased was and that she had lived away from home for a long time
57. As I see it, there is no evidence that demonstrates that the death of the deceased can be attributed to the accused, or that he had a motive to commit the act.
58. Ultimately, in my judgment, the evidence availed by the prosecution does not meet the test of having established a prima facie case that necessitates the accused to be put on his defence.
59. Accordingly, the Prosecution case is hereby dismissed and the accused is hereby acquitted. He shall be set at liberty forthwith unless otherwise lawfully held.
60. Orders accordingly.

**DATED AT KERUGOYA THIS 28<sup>TH</sup> DAY OF JULY 2023**

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**RICHARD MWONGO**

**JUDGE**



**In the presence of:**

1. Accused in Person
2. Ms. Waweru - for Accused
3. Mamba - for State
4. Court Assistant - Mr. Murage

