



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Kamau (Criminal Case 53 of 2017)  
[2023] KEHC 22738 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22738 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE 53 OF 2017  
HK CHEMITEI, J  
SEPTEMBER 27, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**CHARLES MWANGI KAMAU ..... ACCUSED**

**RULING**

1. The accused herein was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal code*.
2. The particulars of the charge were that on the 10<sup>th</sup> day of December 2017 at Heshima trading centre in Nakuru north sub county within Nakuru county jointly with others not before court murdered Jack Gachoka Gitau.
3. The accused denied the charge and the state called three witnesses to prove its case against him. At the close of the prosecution case the court directed the parties to file written submissions which they have done.
4. The first prosecution witness Dr. Titus Ngulungu performed the post mortem exercise upon the deceased body and opined that the cause of death was head injury with massive subdural haematoma and brain contusion due to blunt force trauma in keeping with homicide.
5. PW2 Miriam Washuka Waruinge testified that when she woke up in the morning she saw a half-naked man lying near her shop and she informed a gas attendant. The police were called who came and picked the body. She said that she never heard any commotion the previous night.
6. PW Chief Inspector Samson Ogotu from National Forensic Department produced and played a CCTV footage which showed some four men attacking a person. He also produced still photos obtained from the said footage as part of his evidence.



7. The evidence before this court has rightly submitted by the defence counsel does not indicate the facial expression of the assailants. The court was also able to see the same in court and it was not possible to identify that one of the assailants was the accused herein. The lighting of the scene appeared not very good.
8. In the absence of an eye witness to corroborate the forensic report it is not very easy to conclude that the accused was part of the four assailants. At any rate the ingredients of the offence in particular malice aforethought has not been proved against the accused.
9. In the premises this court has no option but to agree with the defence counsel that the prosecution has not established a *prima facie* case against the accused capable of being put on his defence.
10. Consequently, he is hereby set free under the provisions of Section 210 of the [Criminal Procedure Code](#) unless lawfully held.

**DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 27<sup>TH</sup> DAY OF SEPTEMBER 2023.**

**H K CHEMITEI**

**JUDGE**

