



**Republic v Kinyanjui (Criminal Case 27 of 2018)
[2025] KEHC 2887 (KLR) (Crim) (11 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2887 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 27 OF 2018
K KIMONDO, J
MARCH 11, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

MICHAEL THIONGO KINYANJUI ACCUSED

RULING

1. The accused is charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. The Director of Public Prosecutions informs the High Court that on the 13th May 2018 at Umoja Zone 9 in Buruburu Division within Nairobi County, jointly with others not before the court, murdered James Irungu Waithaka.
3. He pleaded not guilty. The prosecution lined up eight witnesses. One of them appeared before my predecessor, Nzioka J. On 4th October 2022, and, pursuant to section 200(3) of the [Criminal Procedure Code](#), the accused elected to proceed from where the matter had reached.
4. I am now called upon to determine whether that corpus of evidence is sufficient to place the accused on his defence.
5. Learned counsel for the defence, Mr. Midenga, filed detailed submissions with a list of authorities dated 17th January 2025. The Republic equally lodged submissions dated 15th May 2024. I believe the correct year should be 2025.
6. The accused relied on a number of precedents including *Bhatt v Republic* [1957] E.A. 332, *Woolmington v DPP* [1935] AC 462, [Abel Monari Nyanamba v Republic](#), Nairobi, Court of Appeal, Criminal Appeal 86 of 1994 [1996] eKLR and [Republic v Martin Thigunku](#), Chuka High Court



Criminal Case 17 of 2018 [2021] eKLR. It was submitted that the evidence does not meet the required standard of proof; and, accordingly, the accused should be acquitted at this early stage.

7. But according to learned counsel for the Republic, Ms. Kigira, there is sufficient direct and circumstantial evidence linking the accused to the homicide; and, that on the totality of the evidence, the accused has a case to answer.
8. My finding is as follows. It bears repeating that the accused is still deemed innocent at this stage. Furthermore, the inquiry at this juncture is merely to establish if a prima facie case has been made out requiring a rebuttal from the accused.
9. On 13th May 2018, Geoffrey Muraya Kimani (PW1), found his brother (the deceased) bleeding from a stab wound at the upper rear part of the leg. Upon inquiry, the deceased said he was stabbed by “Kazindu”. The deceased was at first ferried to Mama Lucy Kibaki Hospital and then transferred to Kiambu Hospital where he died.
10. PW2 was Peterson Karimi Gaturu. He is a businessman and also a pharmacist. He was attracted to the scene by screams and commotion behind the church. He found the deceased bloodied. He obtained some gloves, bandage and plaster and rushed back to give him first aid. The deceased was then taken by a police vehicle to Mama Lucy Kibaki Hospital. According to the witness, the deceased “murmured” to the doctor that “it is Kazidu”. The witness said he knew the accused as Kazidu.
11. According to PW3 and PW4, the attack arose from disputed construction over a plot situated at Umoja Zone 9. However, the evidence of these two witnesses is tainted because they were both declared hostile.
12. But there is then the evidence of Joseph Muchiri Kungu (PW7). On 13th May 2018, he found some people digging up a trench on a plot co-owned by Simon Mugo and the deceased. One of those persons was Brian Murage Njeri whom the witness said was employed by the accused. Brian was initially charged as the 1st accused in this case. He jumped bail. After futile attempts to re-arrest him, the Republic entered nolle prosequi on 7th July 2022.
13. PW7 was not satisfied with the answers from the strangers and he decided to call Mugo and the deceased. When the two arrived, they asked the builders to cease construction but they refused. The two reported the matter to the police. Upon seeing the police, the builders took off only to return later in the evening. When they were again told to stop, they attacked the three. He testified that-

It became a big fight and we decided to save our lives. I was attacked by Brian first and started moving backwards. Mugo was a few meters away and he slid. Brian removed a knife and stabbed him. James Irungu [deceased] was also stabbed by Brian.
14. To be fair to the defence, I have kept in mind that PW7 in cross examination blamed Brian Njeri for the stabbing and exonerated the accused.
15. The death of the deceased is no longer in doubt. It was confirmed by his brother Geoffrey Muraya Kamau (PW1). There is also the emphatic post-mortem report dated 14th March 2016 (exhibit 3) produced by Dr. Johansen Oduor (PW8). The pathologist concluded that the cause of death was “exsanguination due to penetrating trauma”.
16. Applying the precedents in *Bhatt v Republic* [1957] E.A. 332 and *R v Kipkering arap Koske & another* 16 EACA 135 (1949); and, upon the digest of the evidence of all the material prosecution witnesses, I find that the Republic has established a prima facie case against the accused.



17. Accordingly, under the provisions of section 306 (2) of the *Criminal Procedure Code*, I now place the accused on his defence.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MARCH 2025.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-
Accused.

Ms. M. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Midenga for the accused instructed by Midenga & Company Advocates.

Mr. E. Ombuna, Court Assistant.

