



**Republic v Muigai (Criminal Case 24 of 2018)
[2025] KEHC 2888 (KLR) (Crim) (11 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2888 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 24 OF 2018
K KIMONDO, J
MARCH 11, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

HENRY MUIGAI 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 29th April 2018 at Kibagare slums in Spring Valley within Nairobi County the accused murdered Jacinta Njeri.
3. He pleaded not guilty. The prosecution marshalled seven witnesses. Six of them appeared before my predecessor, Ogembo J. On 2nd October 2022, and, pursuant to section 200 (3) of the *Criminal Procedure Code*, the accused chose to proceed from where the matter had reached.
4. Learned counsel for the defence, Ms. Ajiambo, filed brief submissions dated 16th January 2025. The Republic equally lodged submissions dated 29th January 2025.
5. The accused's case is that the Republic has failed to establish a prima facie case. That if he had something to hide, he would have escaped from the locus in quo and not reported the matter to authorities. Furthermore, assuming that he was involved in a fight with the deceased, there surely would have been tell-tale signs on his body or attire. I was implored to release him at this stage.
6. But according to learned counsel for the Republic, Ms. Kigira, the totality of the evidence closely links the accused to the homicide; and, that it calls for a rebuttal.



7. In order to answer the question whether the evidence is sufficient to place the accused on his defence, I have kept in mind that there was no eye witness and that the prosecution's case revolves around circumstantial evidence. As I will discuss later, circumstantial evidence is still good evidence.
8. I will now analyse that evidence. Julius Bwari Kabachu (PW1) was the chairman of Nyumba Kumi. On 29th April 2018, at about 06:30 hours, the accused went to his house and told him that he spent the night away from his one-roomed mabati house. And, that when he returned at 06:00 hours, "it had been broken into and there was a lot of mud at the door...and he found a body of a woman in the house and the woman had been raped. The woman had died".
9. The witness testified that the accused denied committing the homicide. PW1 advised him "to go and report the matter to the police station if he was not the one who did it". PW1 notified the area Assistant Chief, Mbeta Dancum Anyona (PW2). The Assistant Chief confirmed that the accused had in fact made a report at the police station, and that the police were on the way to the scene.
10. PW1 proceeded to the house and saw the body lying a single room. There was a lot of mud in the house and things were strewn all over. Like I stated, PW2 confirmed that the accused reported the matter to Loresho Police Post. When PW2 went there he was told by the duty officer that the accused was referred to Spring Valley Police Station. The OCS at Spring Valley confirmed it and informed him that the accused and police officers were on the way to the scene.
11. PW3 was PC Stanley Kanyili of Spring Valley Police Station. He and scenes of crimes personnel visited the house of the accused. He testified that the body was down on the floor; there was no bed; and, that the house was a one-roomed tin-shack. Some of the neighbours told him that the accused had been seen with the deceased at midnight. The scene was processed and body was removed to city mortuary.
11. PW4 was Grace Wambui Ngugi, the mother of the deceased. She identified the body for postmortem purposes on 2nd May 2018. The autopsy was conducted by by Dr. Sylvester Maingi (PW5). The pathologist found bruising of the soft tissue of the neck including the neck muscles and mild bruising on the vaginal opening and walls. He opined that the cause of death was "asphyxia due to manual strangulation".
12. PW6 was the government analyst, Elizabeth Waithira Oyiengo. She received a vagina swab and finger nails collected from the deceased as well as mouthal swabs collected from the accused. The samples were accompanied by two Exhibit Memo Forms dated 7th and 8th May 2018 (exhibits 3 & 4). Her report is dated 1st April 2019 (exhibit 2).
13. Upon analysis she found that
the vaginal swab was stained with semen but there was no DNA generated on the semen.
It generated no DNA profile.
14. The last witness was retired police officer, Samson Otieno Owaga. By the time he went to the scene, the body had been removed to the city mortuary. An irate mob had also demolished the accused's house. He later escorted the accused to Mathare Hospital for mental assessment and a report was issued confirming he was fit to stand trial (exhibit 5).
15. According to his investigations, the accused and deceased were friends. Although she would occasionally visit the accused, she lived in Kangemi. Her body was found inside the accused's house in Kibagare slums. The witness said that the accused claimed he was not in the house that night.



16. My finding is as follows. Section 203 of the [Penal Code](#) provides that any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
17. There are three key ingredients that must be present in the offence of murder: first, the prosecution must prove beyond reasonable doubt the death of the deceased and the cause of that death; secondly, that the accused committed the unlawful act that led to the death; and, thirdly, that the accused was of malice aforethought. Malice aforethought is the mens rea or the intention to kill another person.
18. There is absolutely no doubt about the death of the deceased. The lifeless and naked body was seen inside the accused's house by PW1, PW2 and PW3. It was identified for postmortem purposes on 2nd May 2018 by her mother (PW4). Doubt is completely erased by the post mortem form (exhibit 1) produced by Dr. Sylvester Maingi (PW5).
19. There was bruising of the soft tissue of the neck including the neck muscles. This was on both sides but the thyroid bone was intact. In the genital urinal system, the vaginal opening and walls were mildly bruised. The pathologist concluded that the cause of death was "asphyxia due to manual strangulation".
20. From that evidence, I readily find that the death was unlawful. However, there was no eye witness to the murder. The entire case for the prosecution is thus built atop circumstantial evidence. In *R v Kipkering arap Koske & another* 16 EACA 135 (1949) the court held-

In order to justify the inference of guilt, the inculpatory fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt
21. The incriminating evidence in this case is from PW3 who claimed that some witnesses at the scene claimed to have seen or heard the accused and the deceased at midnight. In addition, there is the evidence of PW2, a police officer who visited the scene, and who testified that-

I only asked the crowd generally and I was told there had been like 2 or 3 other bodies in the house. That the lady had been seen drunk in the night before and that she had been with the owner of the house
22. But no such witnesses were called. It thus remained classic hearsay. Furthermore, those allegations must be weighed against the conduct of the accused. The accused told PW1, PW2, PW3 and PW6 that he was away on the material night. That when he returned to his house at 06:00 hours he discovered it had been broken into and the body of the deceased was lying on the floor. There was a lot of mud in the house and things were strewn all over. The accused immediately reported the matter to the Nyumba Kumi Chairman and to both Loresho Police Post and Spring Valley Police Station. He protested his innocence throughout.
23. The vaginal swab collected from the deceased was stained with semen but no DNA profile was generated connecting the accused to the sexual assault. So much so that beyond the fact that the body was discovered in his house; and, that he and the deceased were friends, there was no credible link to the homicide.
24. In a criminal trial, the standard of proof is beyond any reasonable doubt. As things now stand, there is no reliable evidence proving that the accused killed the deceased or pointing to malice aforethought. Paraphrased, there is no evidence to convict if the accused opts to keep silent.



25. The law on that subject was succinctly captured in *Bhatt v Republic* [1957] EA 332 at 334-

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. [underlining added]

26. From my analysis of the evidence and the legal authorities, I am not persuaded that the Republic has proved a prima facie case against the accused sufficient to place him on his defence.

27. Accordingly, under the provisions of section 306 (1) of the *Criminal Procedure Code*, I enter a finding of not guilty. The accused is hereby acquitted.

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

Ms. Ajiambo for the accused instructed by Ajiambo Luande & Company Advocates.

Mr. E. Ombuna, Court Assistant.

