



Republic v Makori (Criminal Case 4 of 2019) [2025] KEHC 8835 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8835 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL CASE 4 OF 2019
CW MEOLI, J
JUNE 19, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

WILFRED MOTURI MAKORI ACCUSED

RULING

1. Wilfred Moturi Makori, the Accused herein is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The information states that between the night of 6th March 2019 and 8th March 2019 at Kandisi area, Ongata Rongai, Kajiado County, he murdered Agnes Makena Kaaria.
2. The Accused denied the charges. During the trial, the prosecution called 16 witnesses to testify. The duty of the court at this stage is to determine whether a prima facie case has been established against the Accused. Section 306 (2) of the *Criminal Procedure Code* provides as follows:

“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.”

3. Briefly, the prosecution case through 16 witnesses was that Agnes Makena Kaaria, the deceased, operated a bicycle spare parts business at Ongata Rongai where she also lived. One of the last witnesses to interact with her were Gloria Kasanga Julius (PW4), whose business premises were next to the deceased’s business. On the evening of 6.03.2019 at about 630pm, PW4 sought a lift home from the



- deceased in her vehicle. However, the deceased informed her that she did not have the vehicle but was heading home. The other witness who spoke to the deceased on 6.03.2019 was her sister Julia Karamana Arimi (PW 2).
4. However, on the next day, the deceased could not be reached by any of these witnesses. Prior to these events, the Accused person, a nephew of Sophia Kerubo (PW3) had since February 2019 been hosted by the said aunt who was residing in Kware area, Ongata Rongai. He was allegedly looking for a job . On the night of 6.03.2019, the Accused informed PW3 that he had found a place to stay, with a lady who owned a shop and a vehicle, before leaving and staying away for three days.
 5. On the same night, the Accused approached Dennis Kemboi (PW10), an old school mate at Nakuru, who resided at Plains View flats in Ongata Rongai seeking a place to park the vehicle eventually identified to belong to the deceased, but which the Accused claimed at the time to belong to the girlfriend. This assertion was repeated to the police, including PC Erickson Nyamwega (PW 15) and IP Joshua Omwenga (PW16) on the next day when, upon receiving his report, they accompanied PW5 the reportee to the flats . Three men including the Accused were arrested and later released, with the Accused promising to avail ownership documents for the vehicle, which was retained by police at the Ongata Rongai Police Station. He did not return, but a search with the National Transport Safety Authority on the same date revealed the owner of the vehicle to be the deceased.
 6. Unable to trace the deceased on the phone, PW2 had since 7.03.2019 been in contact with PW4 who was also making calls in efforts to reach the deceased. On the morning of 8.03.2019, PW4 noticed that the deceased's shop was open. On getting there, she met the Accused who upon being questioned claimed that the deceased had travelled on business with her vehicle. He went away briefly returning later, and as the Accused had keys and was opening inner doors, PW4 called PW2, who spoke to the Accused on PW4's phone, following which PW2 asked PW4 to have the Accused arrested. He however quickly fled but alarmed, PW2 asked her husband Moses Kimathi Murira (PW1) to proceed to Ongata Rongai to make inquiries.
 7. In the company of two police officers, PW1 proceeded to the deceased's shop near Nairobi Women's Hospital Ongata Rongai where they found the shop open and the padlocks on the counter. The shop had been ransacked. From there they went to the deceased's house, which was located near Kandisi police post. They found the main gate locked and had to access the compound via the rear perimeter live fence.
 8. It was noted that the deceased's vehicle was not in the compound, and upon the men breaking into the house, found it ransacked. As investigations commenced, PW1, PW2 and her brother returned to the house again on 9.03.2019. On this occasion, they noted what appeared to be a trail of blood starting from the house veranda and ending at a place where building stones had been arranged in a pile, and where they detected a foul smell. Police were called to the scene where they noted the appearance of a body under the building stones. Later, while at the police station, the witnesses saw the deceased's vehicle and identified it. Police also visited the house of PW3 where a jacket identified to belong to the deceased was found.
 9. The Accused was arrested on 11.03.2019 and on 12/3/2019 the body of the deceased was exhumed under the supervision of Dr. Njeru (PW15) who also conducted the autopsy which revealed that the cause of death was bleeding resulting from five stab wounds inflicted on the deceased's back between the shoulder blades. The scene and exhumation were documented on the relevant dates by Sgt. George Odhiambo (PW12) and the photographs together with other items recovered or obtained during and in relation to the investigations produced as Exhibits 1- 13. During identification parades conducted on



- 12.03.2019 by IP Martin Mbae (PW11) and witnessed by PW3, the Accused was positively identified by PW4 and PW5.
10. By his written submissions, the Accused asserted that the prosecution failed to establish a prima facie case against him, citing Sections 210 and 306(2) of the *Criminal Procedure Code* and the case of *Ronald Nyaga Kuria v Republic* [2018] eKLR in support of his arguments.. And in addition the case of *Republic v Juma Kituko Mwambegu* [2020] eKLR as concerns the ingredients of murder.
 11. His position was that the prosecution did not establish any relationship between him and the deceased, and that while his possession of the deceased’s motor vehicle was a central feature of the trial, the evidence adduced by the prosecution did not demonstrate how he committed the offence. Further, that the prosecution evidence did not place him at the deceased’s house or prove that he was in the company of the deceased on the material dates. Pointing out that he spent the entire day of 7/3/2019 at Plains View apartments and Ongata Rongai police station being interrogated by PW15 and PW16. And that from the chronology of events between 6/3/2019 and 8/3/2019 his movements and whereabouts were well established by the prosecution witnesses. The Accused stating that the prosecution however did not establish when the deceased was murdered and that he committed the offence.
 12. He faulted the prosecution’s alleged failure to track down other possible suspects, such as the alleged caller who had identified himself to PW6 as “Ndungu”, and the caller who called PW9 instructing her not to deliver milk at the deceased’s home. By for instance, obtaining call data from the telephone service providers. He dismissed as inconclusive the DNA results by PW13 relating to the blue jacket that was found at the deceased’s home while the grey jacket recovered from the home of PW3 was not subjected to any DNA analysis.
 13. Asserting that the prosecution evidence did not rise up to the required standard, the Accused contended that all that was proved thereby was that the deceased’s death was caused by an unlawful act. But without identifying the perpetrator who with malice aforethought executed the unlawful act. Relying on the Court of Appeal case of *Anthony Njue Njeru v Republic* [2006] eKLR the Accused asserted that in the circumstances, he should not be called upon to fill the gaps in the prosecution case.
 14. The essential ingredients to be proved in a successful prosecution for the offence of murder are the fact of the death of the deceased, that the act or omission causing death was unlawful, that the act or omission was by the accused, and that the act or omission was accompanied by malice aforethought. See the decision of the Court of Appeal in *Mwaura vs Republic* (2025) KECA 827 (KLR).
 15. At this stage, all that the court ought to establish is whether a prima facie case has been made out against the Accused. In the case of *Wibiro alias Musa v Republic* (1960) EA 184 the Court of Appeal for East Africa defined the term “prima facie case” as follows :-

“By his use of the phrase “prima facie case” the learned judge has left this court in doubt as to his precise meaning. It is a phrase more commonly used at the close of the prosecution’s case than at the end of the whole case at which stage the only question is whether the prosecution has proved its case, on the whole on the whole of the evidence, beyond reasonable doubt. The question of what constitutes a prima facie case was dealt with by this court in 1957 in the case of *Ramanlal Trambklal Bhatt v R.* (1957) EA 332 (EA) and the following passage was taken from the judgment of the court at [age 334 and p. 335:-

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one which on full consideration



might possibly be thought sufficient to sustain a conviction. “This is perilously near suggesting that the court would not be prepared to convict if no defence is made; but rather hopes the defence will fill the gaps in the prosecution case. “Nor can we agree that the question whether there is a case to answer depends only on whether there is ‘some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence. “A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence. It is true as Wilson J, said, that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively; that final determination can only properly be made when the case for the defence has been heard. 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.” (Emphasis added)

16. I have given careful consideration to the prosecution evidence in light of the relevant provisions of law and the case law above. The deceased herein disappeared on 6.03.2019 soon after she closed her shop for the day to go home. Her motor vehicle equally went missing. About four days later, her decomposing body was found in a shallow grave camouflaged by a pile of building stones within her compound. The cause of death of the deceased was five stab wounds inflicted to the back. Her house though locked, appeared to have been ransacked with items strewn all over the bedroom in particular.
17. It is apparent that the prosecution case hinges upon circumstantial evidence. The key planks of this evidence tending to connect the Accused with the murder of the deceased include the Accused’s possession of the deceased’s motor vehicle on the night the deceased went missing and on the next day (per PW3, PW5 and PW10) and his entry into and presence at the deceased’s shop on 8.03.2019 (per PW4 and PW2). As well as statements made to these witnesses and police by the Accused.
18. In view of all the foregoing, the court has come to the conclusion that the prosecution has established a prima facie case against the Accused warranting his being placed on his defence. It is so ordered.

DELIVERED AND SIGNED ELECTRONICALLY AT KAJIADO ON THIS 19TH DAY OF JUNE 2025.

C.MEOLI

JUDGE

In the presence of:

For the State: Mr. Kilunda

For the Accused: Mr. Oyunge

Accused: Wilfred Moturi Makori

C/A: Lepatei

