



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Gatungu (Criminal Case E021 of 2024)
[2025] KEHC 8026 (KLR) (Crim) (10 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8026 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL CASE E021 OF 2024
KW KIARIE, J
JUNE 10, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

MARY WANJIKU GATUNGU ACCUSED

JUDGMENT

1. Mary Wanjiku Gatungu is charged with two counts of murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. In count one, the particulars of the offence are that on the 17th day of November 2024, at Githabai, in Haraka location, South Kinangop Sub County of Nyandarua County, murdered Joseph Muturi.
3. In count two, the particulars of the offence are that on the 17th day of November 2024, at Githabai, in Haraka location, South Kinangop Sub County of Nyandarua County, murdered Josephine Wanjiru Wanjiku.
4. According to the prosecution, the accused had given birth to the deceased children with another man other than her current husband. Her husband and mother-in-law had openly expressed that they did not want the two children. This is how the two went to stay with their maternal grandmother.
5. The prosecution contends that, on the material day, the accused was alone with the children whom she killed. She then sought assistance from her neighbour on the pretext that she did not know what had happened to them.
6. Mary Wanjiku Gatungu, the accused, asserted that she went to the shopping Centre and left the two children in the house. Upon her return, she found them in bed, covering themselves with a blanket



up to their faces. They did not respond when she called them. It was then that she hurried to call a neighbour.

7. The issues for determination are:
 - a. How did the incident that led to the death of the deceased occur?
 - b. Did the accused cause the deaths of the deceased children? and
 - c. If she did, were the deaths accidental or premeditated?
8. We had no eyewitnesses to this incident, so the evidence against the accused is circumstantial. In the case of *Mohamed & 3 Others vs Republic* [2005]1KLR 722 Osiemo, Judge explained what circumstantial evidence is as follows:

Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis but the one proposed to be proved.

9. The law regarding the application of circumstantial evidence in criminal cases is clearly and exhaustively articulated in the well-known and frequently cited case of *Rex vs Kipkering Arap Koske and another* [1949] EACA 135, the Court of Appeal held:

In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

These two cases will guide me as I analyze the evidence adduced against the accused.

10. At the time of the unfortunate incident, the accused was left at home with her two children. The prosecution contended that it was premeditated. Her version of the incident suggested that it was accidental.
11. Jane Njeri Kape (PW5) was the first person to arrive at the home where the two children died. Her evidence was that the accused ran to her on the 17th of November 2024 at around 5 p.m. She informed her that she found her children in bed upon returning from the shops, and they did not respond when she called them. When she touched the boy, he felt cold. The children had clothes and were not covered.
12. The area assistant chief, Teresia Wambui Kibuika (PW6), stated that when she observed the deceased girl, she noticed what appeared to be a scratch mark on the right side of the neck.
13. Dr. Titus Ngulungu (PW7), a pathologist, performed post-mortems on the bodies of the two children. On the body of Joseph Muturi, he noted bruises on the upper and lower lips, which included the gum. He had bruises on the upper neck. There was bruising and contusion on the tissue covering the scalp. The lungs were collapsed, and the heart showed bleeding on the surface. The body of Josephine Wanjiru had similar injuries. He concluded that both children died of asphyxia due to neck compression and covering pressure to the nose and mouth.
14. From the post-mortem findings, the deaths of the two children were not accidental; they were deliberately caused.
15. The prosecution pointed an accusing finger at the accused based on the evidence of Josephine Wanjiru Gatungu (PW1), the accused's mother. Her testimony was that the accused's husband had informed her that he and his mother did not want these children. Although Jeff Ngige Mbugua (PW2),



the accused's husband, denied this, it is worth noting that the two separated in September 2024, purportedly to allow her to seek employment. This explanation was unconvincing.

16. The defence presented by the accused amounted to nothing more than a denial. The entirety of the evidence on record is inconsistent with the accused's innocence and cannot be explained by any reasonable hypothesis other than her guilt.

17. To secure a murder conviction, the prosecution must demonstrate the presence of malice aforethought as supported by the evidence on record. In Black's Law Dictionary, 10th Edition, malice aforethought is defined as:

The requisite mental state for common-law murder, encompassing any one of the following: (1) the intent to kill, (2) the intent to inflict grievous bodily harm, (3) extremely reckless difference to the value of human life (the so-called "abandoned and malignant heart"), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule).

18. Section 206 of the *Penal Code* gives instances when malice aforethought may be proved. It provides:

Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
- (c) an intent to commit a felony;
- (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

19. The two victims were brutally killed. The killing was premeditated. Malice aforethought was therefore established. The prosecution has proved the charges beyond a reasonable doubt. I find her guilty and convict her of murder.

DELIVERED AND SIGNED AT NYANDARUA THIS 10TH DAY OF JUNE 2025

KIARIE WAWERU KIARIE

JUDGE

