



REPUBLIC OF KENYA



**Republic v Karanja & another (Criminal Case 30 of 2019)
[2025] KEHC 10557 (KLR) (Crim) (21 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10557 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE 30 OF 2019**

MW MUIGAI, J

JULY 21, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

SIMON GITAU KARANJA 1ST ACCUSED

DOMINIC OKOTH JOHN 2ND ACCUSED

RULING

1. The accused was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*, the particulars of the offence are that:

SIMON GITAU KARANJA & DOMINIC OKOTH JOHN, On 11th day of April 2019 at City Garden area Embakasi East Subcounty within Nairobi County murdered VALLARY ATIENO AMENYI.

2. Mental assessment was done and the accused was found fit to plead. The accused persons later pleaded not guilty to the charges and the prosecution called 10 witnesses in proof of the charges.

The Prosecution Evidence.

3. PW1, Laura Akinyi Odhiambo testified that she resided at City Carton in Embakasi West ward where she runs an Mpesa shop Gikomba. The deceased was her friend and that sometime in 2017 her friend Valeria Atieno requested for her ID card to register her line. The deceased did not have her ID. PW1 called her parent and they went to the Mpesa next to them at City Carton.



4. They bought a Safaricom line using 100/=, PW1 identified her ID in court 34XXX024 and was produced as P Exh1. The deceased was registered and they went home. The deceased was their neighbor at City Carton.
5. That on 11/4/2019 at about 3:00am they were sleeping when the deceased mother knocked their door, they found the deceased being carried by her father and Baba Ben and some neighbors. The deceased was bleeding and she was taken to Mama Lucy hospital while other neighbors remained behind. The deceased's father called after 30 minutes and told them she had died.
6. PW1 stated that the deceased was their neighbor for 10 years, her father bought her a kambambe phone her father bought her China phone which was black and shiny, her boyfriend gave her another phone Nokia Lumia black in color.
7. That on 4/6/2019 PW1 was called by DCI Wanjohi to go to Buruburu police station and was to identify a phone. She found many phones on the table and she was able to identify the deceased's Nokia Lumia phone. The phone had a cracked screen and she also saw her with it the day before. PW1 identified the phone in court as PMFI- 2 .
8. She was cross examined by the 1st accused counsel, she stated that she had been friends with the deceased since childhood, they attended Nairobi River primary school between 2004 and 2011. The deceased was also a class mate, she was born in 2007 while the deceased was born in the year 2000. They also lived at City Carton all their lives.
9. The deceased asked for her phone to register a line, her mother had travelled and the brother was away. She could not remember the number she registered using her ID, the deceased used it for 3 years.
10. She was with her sister Marleen on the night of 11/4/2019, they had gone to bed at 6:00pm. She had seen the deceased at 6:00pm at their house and she greeted her and went to their house. The deceased was 4 houses away from their house. Vivian, the deceased's cousin woke them up she was crying and shouted "amkeni amkeni Valery amedungwa na kisu ..." She was in form 2 .
11. She did not state who stabbed her, they opened the door and their father went out first. Vallary had a Techno Kabambe phone which she said was given to her by her mother in 2017. She was anxious to use it. Her best friend was called Mariam who stayed at Kiambia and was also her school mate.
13. That her father bought her Itel phone that was black at the front, she had a sim card at this time, her lover bought her a Nokia Lumia phone. The boyfriend is called Mwanake he was 24-25 years at the time and they started relating in 2018. He would meet her outside the compound and was a neighbor in 2018 for 4 months. The boyfriend's parents lived in Biafra while he worked as a mechanic in a garage , she did not know the garage.
14. Mwanake was Kikuyu and was of medium height, medium hair and light skinned. He went back to Biafra after 4 months, but would still come back daily at about 10:00pm. Vallary used to close gate and keep the keys, she was the only one with copies of the keys, the gate would be opened at 5:00am.
Her room was closest to the gate and neighbors would call her to open the gate .It was a mabati gate. PW1 did not know if it remained opened that night.
15. Further that Mwanake bought the phone in April 2019 and it had a crack but it was working. PW1 had met DCI Wanjohi earlier when he asked her to bring her ID Card since the deceased line was traced and had been registered in her ID number. That she worked in an Mpesa shop and she knew about phone, she also knew how the deceased phone was cracked. It did not have a sim card and she did not know



- the serial number. She heard from Baba Ben that the deceased phone had been stolen and her bag was found at the gate, she heard this after they came from hospital when he mentioned her bag and a cap.
16. PW1 did not hear the deceased scream. The padlock of the gate was not broken and it was also possible that the gate had not been locked. The closest police station was 2 km away from the place. The perpetrator had to be someone known to the deceased because the area was safe.
 17. The deceased was in a black trouser and orange top, she had no shoes on. Another padlock was bought by neighbors and Baba Ben kept the keys. The gate is still closed at 10:00pm and is opened at 5:00am .
 18. She was cross examined by the 2nd accused counsel, she testified that they were neighbors and 10 houses in between them. The Plot has a common gate, the family occupied 2 houses and 2 houses in between them .4 people slept in the deceased house, Vivian, Whitney, Awino and the deceased.
 19. She did not see the person who stabbed the deceased, Vivian informed them the deceased was stabbed. She did not know the 2nd accused person and saw him in court for the first time. She did not know if the accused got the Nokia Lumia from a repairer. The DCI did not tell her the people who were found with it, she was told in court that Gitau and Dominic were found with it.
She did not see Mwanake during the funeral gatherings. She stated in re-examination that she did not hear any quarrels between the deceased and Mwanake.
 20. PW2, Dr Charles K Muturi Pathologist based at Mama Lucy Kibaki hospital referred court to the postmortem report done on 16/4/2019 at the hospital. The deceased was 20 years old of good nutritional state and medium physique.
She had a recent injury in form of penetrating stab wound on the left side of the neck which was 5 cm long 1.5 cm width. It severed the neck vessels and fractured the cervical vertebrae, transected through the spinal cord.
The skin had punctured marks on the left elbow signifying drug administration. The cause of death was severed blood loss and cervical spine injury due to sharp force trauma consistent with stab wound.
 21. He also took blood specimen as requested by the police for matching the weapon of assault. The postmortem report was produced as Exhibit 1.
 22. He was cross examined, he stated that the date was 16/4/2019 when he examined the deceased, while the document was filled by the police on 15/4/2019 when it was registered at the station. Attempts to inject medicine was also noted.
 23. On further cross examination by the 2nd accused, he testified that he was not able to tell medical interventions that would assist in compounding the situation since he did not access her records.
 24. PW3 Fredrick Jesse Ochieng Ouma, also a resident of Carton Buruburu where he did panel beating and spray painting for a living.
 25. He stated that he was at his house on 11/4/2019 and was sleeping when at 3:00am he was woken up by screams from his neighbors' children. The children slept in the first room next to his gate. The neighbor was called Mama Valerie. He put on the lights and got an iron rod from under the bed, the gate was opened, he headed towards the gate .Mama Valerie was also from the children's room and she told him to go to the room and help Valerie and remove the knife that was stuck on her neck and take her to hospital.
 26. He found the deceased on the bed and she had a knife on her neck, she was sleeping on one side. The 3 other children were in the room, the knife had a black handle which he removed from her neck and



- placed it down .He identified it as MFI- 4 .He headed to the gate where he found a black cap and a black handbag, the cap had a mark of 2 guns making an X at the front, he identified it as MFI -5 and the black bag as MF1- 6.
27. Neighbors came out and entered the plot, they carried her to the road and got a taxi. Her mother and neighbors went with her to hospital while he remained behind. He was called after 1 hour and informed of her death.
 28. He was cross examined, he stated that on 10/4/2019 he returned home at 6:00pm and he found the gate was opened.He lived alone and went to bed at 9:30-pm .He did not know if the gate was still open when he went to sleep but when he woke up and opened the door he noticed that it was open .The gate is locked and is opened from inside though he could not tell if it could be opened from outside.
 29. Aoko also told him about the stabbing but she did not tell him who did it. The deceased was still alive when he went to the room and the mother had switched on the lights and the deceased was on top of the beddings. He assisted in carrying her to the taxi, she was still alive at this time. It took 30 minutes to carry her to the taxi.
 30. On further cross examination by the 2nd accused, PW3 stated that he had been neighbors with the deceased family for 2 years, the gate must be opened from inside. He never saw the deceased with a man and did not know Mwanake.
 31. The children screamed and were calling their mother to go and help them, he did not hear them mention names. The mother was in panic when he arrived, he did not see the Accused 2.He only saw the deceased's mother.
 32. He had seen the deceased carry the bag at one time, he does not know if removing the knife caused the death.
 33. PW4 , Samuel Ameli Adiyoo also a resident of City Carton Buruburu where he works as a welder testified that at 10:30pm he was at his house with his wife and children. That he heard sounds calling "mum mum mum.." 3 times .It was at 3:30 am. He lived with his 5 children who slept at a room next to the gate, his house had 4 rooms. He woke his wife up to check on the children, she opened the door and they reappeared while screaming telling Baba Ben to go see saying that a knife was stuck on the neck of Atieno.
 34. He ran and found Baba Ben was already outside, he headed to the room, he found the gate opened and the door to the room was also opened. The deceased was on the bed and lay on her side with a knife stuck on her neck.
 35. Baba Ben removed the knife from the deceased neck, PW4 took it and hid it in fear that someone could go away with it. The knife was identified in court.
 36. They started seeing how they could take her to Mama Lucy Kibaki hospital, neighbors also gathered they found a vehicle after 30 minutes. He searched Valerie's room, he said that she had ITEL phone he had bought for her at Ksh 2100/= .He produced the receipt as P Exh- 7.
 37. He did not get the deceased's phones, he went outside the gate and saw a black bag and cap with an X sign of guns. It was next to a tap. He saw the bag and was convinced the phones had been stolen. The deceased used the bag to carry her things.
 38. He headed to hospital but before he reached the gate he heard his wife screaming .He went to hospital and that found she had already died.He made the report at Buruburu police station , he took the police



to the scene 2 km and cruisers , he also handed over the exhibits to the police who came to the scene .He identified the body on 14/4/2019 .

39. On 5/5/2019, he was called by the police, he travelled from home and on the next day the he went to the police station where he found 2 people and he was asked if he knew them. He was also asked about the deceased bag and was asked to identify Valerie's phone. He identified the Nokia phone with a cracked screen .He also identified the two men in court.
40. PW4 was cross examined, he stated that he had stayed at Carton for 35 years and he had never seen the 1st accused in the area. It also has good security and such an incident had not been seen. The plot had 12 rooms though he did not know the total number of residents as each of them had a family.
41. The gate had 1 padlock and was used by everyone, the key is hung next to the gate for the one who came late. Only residents know this. He locked the gate that night after the children went to sleep.
42. The deceased had her 2 phones which she had charged in his house, the door to the children room was also closed from the inside with a lock, it does not use a padlock.
43. He went to watch TV and slept at 11:30 pm. The sounds he heard were like someone struggling to speak out, the room for the girls so he sent his wife to check on them.
44. When he arrived the door was kicked open but the lock was intact. The deceased was on the bed and was not covered with bedsheets or blanket, she was also alive. Some women also rushed to the room after they heard screams
45. The children remained dumb for about 1 week, the padlock of the gate and the keys have never been found. He found the bag about 1 hour after she had been taken to hospital.
46. The cap was on top of the tap which is inside the plot and is next to the wall. Valerie did not have a cap. He suspected the man who stabbed her left the cap and bag behind.
47. He stated upon further cross examination that he did not know the 2nd accused person that the place is an informal settlement and the room was next to the gate. The road outside the plot is public toad. The door had two locks from inside, he first heard low voices of the deceased and he suspected that they were in danger. The deceased was still alive when they removed the knife, she never uttered anything.
48. The cap was outside the gate next to the wall. It was not on the road, the gate is also not close to the road. The bag had 2 pieces of paper which were still inside it. The deceased was 19 years old and was training to be a salonist. He did not know any relationship with Mwanake.
49. That the 2nd accused had long rasta hair, he was told that the 2nd accused was arrested at Baba dogo . He had not seen the accused before sleep with her phones .The cap was on top of the bag. He had not seen the cap in his house.
50. PW5 Florence Aoko a resident of Carton City where she works as a fish vendor testified that on 10/4/2019 she was with her children listed as the deceased, Vivian Whitney and Leah together with PW4 who is her husband .That the children left to sleep in the other room at 10:30 pm , their room is separate from theirs. Vivian and deceased slept on one bed, Leah and Whitney slept on the other, she heard screams at 3:00 am coming from Valery calling “ ..mum mum mum..”
51. She opened her door and went to see, Vivian was at the door and she told her to rush in and see the deceased, the gate and the door to the room was open , she removed the curtain to the room and saw a knife stuck in her neck , it was a black knife .She rushed out and called for help , a young man Ochieng



- was the first to arrive , they entered where Valery was and he removed the knife from the neck , the deceased never spoke.
52. She went with the neighbors to Mama Lucy hospital, she was put on oxygen and the doctor said she was 50:50, she passed away after a short while. The knife was identified in court, the black cap, the black bag found at the gate was also identified. They took them to Buruburu police station.
- The deceased had 2 phones, Nokia with cracked screen and Itel which was black and shiny, she did not have an ID and her line was registered in the name of Laura Akinyi who was her friend.They did not get her phones that night.
53. She identified her body on 14/4/2019 at Mama Lucy hospital. she was also called to the station on 4/5/2019 and was told about some phones that had been recovered, she saw the deceased Nokia Lumia phone black in colour with a cracked screen, the deceased used to lend it to her to use it.
54. She was cross examined, she testified that she had never seen the 1st accused in the neighborhood, that the deceased had her phones that night when they were watching TV. The children went to their house and locked the door from inside. It is locked by a 'kijubi'.The deceased was the one who called out and when she went , she found her sister at the door. The gate and the door were also opened.
55. She could not say if it was her sister who opened it or not, she did not see anyone leave the gate and she did not see the accused at the plot that time. She testified that the Nokia phone had her friend's line while the Itel one did not have a line. The Itel phone has never been recovered, she has also not been called to identify any other phone .She was also not called to identify any suspect.
56. The 2nd accused counsel cross examined the witness, PW5 stated that they rented 2 rooms in the plot which had 10 rooms with one gate .She kept the key so that she could open it in the morning when she leaves, she then leaves the key in the house. She also closes the gate at 11:00pm and keeps the key in her house in the cupboard next to the door
57. That the deceased slept on the bed that was next to the wall, she lay on her right side with a knife protruding from her neck. There was also blood on the bedsheets but Vivian did not have blood on her.
58. The key of the gate was hanging, the door and the gate had not been broken. The deceased did not tell her where she got the Nokia phone and never introduced any boyfriend to her. She stated during cross examination that the children went to sleep and closed the door.
59. PW6 Vivian Atieno testified that she was in Form 2 and schooled at Golden Gate at the time of the incident. On 10/4.2019 she was in the house with Florence Aoko and her cousins Valery Atieno Whitney Anyango ,Leah ,Adina Trizah .They were in the main house and they went to sleep at about 10:30pm .The room is next to the gate , she slept with Vallary in one bed while Whitney and Leah slept on the next.
60. That she heard Vallary scream at about 3:00am, on waking up everything was all over the floor , the door was open the main gate was also open while Vallary was on the bed and she had a knife on her neck. The lights were on so she could see well. They also slept with the lights on, the other cousins were on the next bed.
61. That when she heard Vallary scream she asked her what the problem was , she told her to go call her mother , her aunt Florence rushed to their room had found the deceased on the bed with a knife stuck in her neck. Her aunt called their neighbor, Fredrick who came and removed the knife. Vallary's handbag was also found outside the gate after she was taken to hospital he knew the handbag and could identify it in court.



62. She also identified the deceased phone at the police station, it had a cracked screen ,the phone and the knife were also identified in court .She did not see the person who stabbed the deceased.
63. She was cross examined by the 1st accused, she stated that she had stayed with her aunt from the time she was in class 4 and she was 7 years, the gate would be closed but at times it remained open. The key was kept by Fredrick or her uncle. That they went to buy rice and found it was open, when they came back Vallary closed the gate but did not put the padlock. This was about 10:00pm.
64. The deceased also closed the door of the room when they went to sleep, it could not be open from outside. She did not see the accused when she woke up and it was also the first time she was seeing him. That the deceased did not say who stabbed him.
65. She was further cross examined by the 2nd accused. Her further evidence was that the deceased slept facing the door while she faced the wall. The knife was stuck on the left side of her neck, she also saw clothes scattered all over the floor. She did not hear anything before the deceased screamed. Further, that she had never seen the 2nd accused before. The deceased got one phone from the father but she did not know where she got the other phone.
66. PW7 , Margaret Wahu Maina from the Government Chemist in Nairobi attended court and produced the government chemist report signed on 1/7/2020.She testified that she received several items from No. 75845 CPL Joseph Wanjohi of DCI Kamukunji. A knife with a black handle marked A1 , green piece of cloth placed in a khaki envelop A2 , blood samples in a bottle marked A3 belonging to Vallarie Atieno Apiyo. A high vaginal swab in a khaki envelope marked A4.
They also received several items on 7/5/2019, a black cap marked A5, blood sample in a bottle neck Simon Gitau, blood sample in a bottle neck A7 Dominic Okoth.
67. On examinations, she found that the knife was heavily stained with blood of human origin, the vaginal swab also stained with blood of human origin but did not have semen, the cap did not have blood stains. The green cloth and the cap did not generate DNA.
68. The DNA profiles were generated from the knife and vaginal swab and matched the deceased's samples.
69. She stated during cross examination that the items were received by someone else and the blood samples were already marked when she received them. The blood samples did not match other samples availed. One was marked Simon Gitau Mwaura. What she received was marked Simon Gitau Mwaura, there was also a typographical error indicated was Dickson Gicho.....she did not receive one marked Simon Gitau Keronye.
70. She was also cross examined by the 2nd accused, she stated that from items received the one marked A7 did not matched a DNA profile .
71. On re-examination , she said that her colleagues Ruth Katho and Elizabeth Oyengo , A6 already came marked as Simon Gitau Mwaura and the deceased name appeared as Vallery Atieno Atieno. This was a typographical error. It did not affect the tabulation and conclusions.
72. PW8 No 235250 IP Michael Njenga from the Scene of Crime office of Buruburu Directorate of Criminal Investigations testified on 11/10/2021. He has been in the profession since 2015 and holds a Bachelor in Biomedical scientific technology. He was gazetted on 31/7/2015 and his duties entails processing a crime scene which he explained to court.
73. He stated that in this case, he accompanied CPL Wanjohi to Mama Lucy Kibaki hospital mortuary where they saw the body of Valarie Otieno. That she was allegedly pronounced dead on 11/4/2019 upon arrival after being stabbed at their sitting room at their home. He took 11 photographs but the



quality was poor. He referred to 4 photographs, the general view of the body the closer view and the general view of the house where the deceased was allegedly stabbed and Photo 4 a closer view of the blood -stained house.

74. He produced the photographs as P Exh 10 a 1-4 and the certificate of the electronic evidence as exhibit 10 b.
75. He was cross examined, he said that he was in the company of CPL Joseph Wanjohi who also identified the body and led him to the house where the deceased was alleged to have been stabbed. That the case was investigated by another officer he found at the scene.
76. He further stated that the description of the device was not in his report, he did not mention how he extracted the photos from the device but the report reads that the negatives / memory card was inserted into the gadget
77. Lastly, his evidence was that it was not necessary to mention the gadget used to produce the photographs.
78. The provisions of Section 200 were read out on 17/3/2023 and directions taken respectively. The accused persons both stated that the case proceeds from where they left it.
79. PW9 Ambrose Munyoki from Safaricom PLC and a data analyst within law enforcement department testified. He stated that he worked with Safaricom for 8 years. He received a letter dated 14/4/2019 identified as MFI- 11 from DCI Buruburu police station requesting for data of the following phone numbers :-
 1. 07046XX486 ,
 2. 07951XX835
80. The letter required the serial numbers of the phones used to call the numbers for the period between 2/3/2019 and 14/4/2019, the names and ID numbers of the owners were also required.
81. He found that phone number 0795XXX835 belonged to Laura Akinyi Odhiambo of ID No 34XXX024. investigations revealed some extracted data from IMEI phone which were found on another phone number seen on the same hand set –this was number 0710XXX245 of ID 25XXX253 belonging to Dominic Owiti used on 12/4/2019 He produced the report on IMEI identification of handset Laura Akinyi Odhiambo as PEXh 12 (a) , the data record PEXh 12 (b) and certificate under Section 106 (A) & (B) of the Evidence Act signed on 9/11/2022 .He did not know the accused .
82. He was cross examined by the 1st accused , he testified that his duties entail data extraction and that the data is system generated .The documents produced are in the original form bearing the original stamp of the company .They printed , certified and handed them to the police. He could not tell if Valarie Atieno used the phone number 0795XXX835 in any manner, he gave original documents to the investigating officer He stated that of the owners for the phones that used the numbers
83. He was also cross examined by the 2nd accused , he further stated that on 12/4/2019 phone number 0710XXX245 was used by Dominic Owiti, the line was inserted in the handset.That there was communication through incoming calls recorded in the data made on 12/4/2019 at 8:15 hrs. The location of the 2nd accused was Babadogo Kasebuni.

Short message SMS from Laura Akinyi Odhiambo sent on 11/4/2019 at 0339pm -3:39 am and location was Nairobi Calvary Temp. He stated in reexamination that the documents were generated from their system at Safaricom Ltd.



84. PW10, No. 75854 PC Joseph Wanjohi testified that he was posted at DCI Buruburu police station where he was tasked with general investigations.
85. He testified that he was on duty on 11/4/2019 and was assigned a case where one Valerie Atieno a resident of City Carton within Buruburu police station area. The report was made by the deceased father who narrated what happened .He visited the scene on 12/4/2019.
86. He got into the room at plot. The plot had 7 houses on one side and 7 on the other side and 1 main gate. This particular room was on the right side as one gets into the gate and was the 1st house and a single room.
87. The room was shared by 4 children who were under the care of Samuel Amenyi their father, the scene was disturbed items were scattered all over, the beddings were not in order and physically it looked like looking for something. The parents narrated that they lived in the next room which was also the sitting room and bedroom .It was in the far end corner of the gate , the next one was near the gate on the left side where the 4 children lived . The parents heard screams from the children bedroom at 3:00am, the mother was the first to move quickly to come to the children room to find out what was happening.
88. That she realized Valerie Atieno had been stabbed, she called the children father and responders came to the scene and took Valerie to the hospital and was pronounced dead on arrival.
89. He learnt that the deceased had 2 phones Nokia Lumia 520, Kytell Kiio MFI2 and MF7.That 0795XXX835 was the number used with Nokia Lumia phone .He was handed other exhibits recovered outside the plot where the deceased lived :small black bag handbag , black cap crossed with guns design .The mother identified the handbag as belonging to the deceased.
A cream cloth with dried blood stains, blood stained knife found inside the room where the deceased was stabbed.
90. He undertook further investigations from subscriber of Safaricom Ltd, he wrote to Safaricom Ltd as per letter marked MFI 11.He got response which was that on 12/4/2019 the gadget was inserted with the line Number 0710XXX245 registered in the name of Dominic Owiti and ID 25XXX253 .The earlier number was registered in the name of Laura Akinyi ID 34XXX024.
91. That the phones had not been recovered from the scene. The investigations showed that Dominic Owiti inserted a line in the Nokia Lumia phone initially used by the deceased. The phone had a broken screen.
92. That the Dominic Owiti was arrested on 3/5/2019 in his house at Kuria Dudu Ruaraka area, they also found a bag of phones where they recovered the Nokia Lumia among various phones. They prepared an inventory which was signed by his colleague the accused and he also signed it. The accused told them that Simon Mwaura sold to him the Nokia Lumia phone at Ksh 800/= , they went to Simon Mwaura who worked as a phone technician .He admitted that he sold the phone to the 2nd accused .
93. They tried to find out how he got the phone, he told them he bought it for Ksh 200/= and that he did not know the name of the person but he could identify the person physically. The two were escorted to Buruburu police station, they did not trace the person who sold the phone to Simon Mwaura. The accused was detained at the police station through a court order.
94. The witness produced the Nokia Lumia phone, exhibit 2, black handle knife as exhibit 4 and 14 black cap exhibit 5, black bag exhibit 6 receipt for Kytel phone exhibit 7 , exhibit memos dated 23//4/2019 and 7/5/2019 as exhibit 8 (a) and (b) , a cream cloth as exhibit 13 and the inventory as exhibit 15.



95. He identified the accused in court, he also witnessed the postmortem and the cause of death was stab wound excessive bleeding .The girls sharing the room were between 6 and 10 years old, he could not tell exact date of birth but they were below 15 years old.
96. He was cross examined, he stated that he recommended the charges to be brought against the suspects in court .The complaint was by PW3 who said his daughter was stabbed at City Carton area .He did not file a report on theft of mobile phone. The 1st accused was not at the crime scene, a kitchen knife black bag and black cap were lying on the said room and the complainant was there.
97. He agreed that the government chemist report would confirm if DNA samples were connected to the 1st and 2nd accused. The black cap and hand bag and the blood stained knife was not recovered from the accused. The Nokia Lumia phone was recovered from the 2nd accused who led them to the 1st accused. He also interviewed residents of the plot where the deceased was stabbed. The mother and siblings were interviewed and none of them saw the 1st accused or either of them.
98. He did not find a number registered in the name of Valarie Akinyi, the gadget the deceased was using was in her name Valarie Akinyi, she had 2 phones but she was using one. The sim card belonging to Laura Atieno was not recovered, none of the lines were registered in the name of the deceased. The numbers of the deceased were given to him by relatives who communicated with her. The receipt for Kytel phone was in the name of the deceased father, it did not show the owner.
99. He met Simon Mwaura at Korogocho, he was a mobile phone technician , he said he sold it to the 2nd accused .His conversation with the 1st accused related to the phone. He followed the ODPPs recommendation to bring charges against the accused.
100. He was further cross examined by the 2nd accused. His response was that the deceased was 20 years old though he did not confirm this. Her bedmate was Vivian Atieno aged 16 years and shared the room with Whitney Anyango who was 12 years old while Leah was 10 years, he did not have evidence of their age.
101. He gave the events of 11/4/2018/19 at 3:00am none of the witnesses saw the accused. The statement of PW3 Fredrick Juma Ochieng was recorded, he said he removed the knife from the deceased neck. He also indicated that there was a gate closed from the insider. The material day on 11/4/2019, it was not broken into. He could not talk of a break in if it was locked in the morning it was opened. The gate was wide opened when he went to the scene, there could have been forced entry. The witnesses could not tell if it was broken into but it was locked when they went to sleep. The phone was dead and could not be retrieved. he could not tell who it belonged to.
102. He also took the evidence of Lilian Atieno Odongo who said the deceased had a boyfriend called Mwanake. That police was of the view that the death was caused by the boyfriend, this was not the police view.
103. The investigating officer testified that he tried to investigate Mwanake but he had moved to another place and was not traced. The mother was also not traced.
104. He had the number and ID details of the 2nd accused at the time of recommending prosecution. He was found at work in Umoja and was alleged to be a conductor, that he was just within the vicinity of the workshop. He had Rasta at that time.
105. He took him to Baba dogo area and he recovered the phone from a nylon in his house, he did not make an inventory of other items as they were not related to the case.



106. The scene of crime had not been interrupted when photos were taken by PW8. That the knife was on the bed and was recovered by PW3, it was not dusted.
107. He stated during cross examination that there was access / entry at the time the offence was committed. The door was wood and iron sheets and there could be forced entry .The deceased boyfriend was not at the scene and not a person of interest to the case.Other witnesses could not be traced and the prosecution closed its case.

WRITTEN SUBMISSIONS.

108. Parties filed submissions under Section 306 as per directions of the court on 30/4/2025.

The Prosecution's submissions.

109. The issue for determination framed as whether the prosecution has established a prima facie case sufficient to have the accused persons to be put on their defence .
The prosecution submits that the burden has been discharged and that the evidence was from credible and reliable witnesses.
109. That the fact that the victim died is not disputed, the evidence of pw4 and Pw5 was that they heard their child scream from their bedroom which was next door and when they rushed they found their daughter stabbed with a knife .They pulled the knife and rushed her to Mama Lucy hospital where she was confirmed dead.
110. The postmortem was produced and the body was identified by Pw3 the deceased father.
111. The prosecution submits that the death was unlawfully caused.
112. That Section 203 refers this to a voluntary act or conduct by the accused against a legally protected right under Article 26 of *the Constitution*. There must be a cause and effect relationship between the accused conduct and the deceased death. That the knife was stuck at the neck of Atieno , the immediate neighbor also rushed to the room where the children were sleeping and found the door opened .The deceased was on the bed by her side and with a knife stuck on her neck which pw3 removed and pw4 took the knife and kept it.
113. That circumstantial evidence links the accused to the offence, the prosecution refers to conditions of circumstantial evidence stated in the case of Abanga alias Onyango Vs Republic and further relies on the doctrine of recent possession as the accused were found with the deceased phone .The accused are expected to explain how the said phones came to his possession under Section 111 and 119 of the *Evidence Act*.
114. Further that forensic evidence also positively connects the accused to the murder.The prosecution relies on the Canadian case of Republic Vs Kowkyk 1988 2SCR 59 where the court ruled on recent possession.
115. On malice aforethought, the prosecution submits that the accused persons entered the room where the deceased was sleeping and stabbed her leading to her untimely death.

The Accused submissions.

109. The 1st accused submits that the accused ought to be acquitted under Section 210 of the *Criminal Procedure Code*. The burden to prove a prima facie case is on the prosecution reliance is placed on



Section 107 of the Evidence Act and the case of Republic vs Alex Mwanzia Mutangili 2017 eKLR. Further, the prosecution failed to prove the elements of the offence of murder.

110. That none of the witnesses implicated the 1st accused as having committed the act of stabbing the deceased. Malice aforethought was also not proved against him.
111. The ownership of Nokia Lumia 529 Black was not proved, the receipt did not have a name or date and therefore insufficient to prove it belonged to the deceased.
112. The Call records and reports adduced in evidence were not registered in the deceased name and also did not disclose that he used the phone.
113. The 2nd accused filed submissions through Wambui Shadrack & Associates. The issue for determination is framed as whether the prosecution has made out a case warranting the accused to be put on his defence. He submits in brief that, the law demands exact scrutiny considering that knife has been lost and the consequences are serious to the deceased and the accused.
114. That the burden of proof has not been discharged and that there is no direct evidence circumstantial or eyewitness account linking the 2nd accused to the offence.
115. That the prosecution case is hinged on the Mobile phone said to belong to the deceased but which was later found in the 2nd accused possession. He submits that, the 1st accused admitted to selling it to him. This corroborates with the 2nd accused statement from the time he encountered with the DCI Buruburu. That he had no knowledge of the phone's origin and certainly that it belonged to someone who was tragically deceased.
116. That fingerprints, call logs, CCTV or DNA do not place him at the scene. The possession of the mobile phone was explained and corroborated and also does not prove participation of the murder.
117. The case is based on suspicion, the police ceased to make further inquiries after finding the phone with the 2nd accused. Mwanake was not investigated despite several witnesses identifying the said deceased boyfriend and he was naturally a person of interest. The phone was not conclusive evidence in this case.
118. The cap at the scene was not linked to the deceased, the forensic tests were not tied to him, he even had dreadlocks thus improbable that he would wear a tight fitting cap.
119. That malice aforethought has not been proved against him and none of the elements of Section 206 of the Penal Code have been supported. The accused did not know the deceased led alone intend to harm him. There was no suggestion of hostility motive communication surveillance did not exist. Reliance is placed on the case of Republic -Vs- Tubere s/o Ochen 1945 12 EACA 63 the court referred to scrutiny of the accused conduct before during and after the incident. The accused action does not reveal pre-meditation or involvement.
120. That the prosecution should not ask the court to fill the evidentiary gaps.
121. That the accused is before court because he unknowingly bought a mobile phone, the error of judgement does not make him a murderer.

Analysis & Determination.

109. I have considered the particulars of charges in the subject information on which the accused have been arraigned. The prosecution has also called 10 witnesses.



110. As submitted, the court is called upon to determine whether the accused should be placed on its defence. The applicable law is in section 306 (1) of the *Criminal Procedure Code* which provides that :
- “When the evidence of the witnesses for the Prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of the several or any one of the several accused committed the offence shall, after hearing, if necessary any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.”
109. A prima facie case is also defined as a case that establishes a rebuttable presumption as in *Republic v Abdi Ibrahim Owi* [2013] eKLR and *Black’s Law Dictionary* 8th Edition where the word is defined as
- “sufficient to establish a fact or raise presumption unless disapproved or rebutted”.
109. The burden of proof is on the prosecution to prove the elements of the offence. All criminal trials place the standard of proof as beyond reasonable doubt, however at this stage the evidence is weighed on a balance of probability to determine whether the defence should be called to rebut the case. Further, the court cannot make conclusions on the evidence if the accused shall be called to respond to the evidence. In the case of *Festo Wandera Mukando v Republic* [1980] KLR 103. The Court of Appeal held :
- “we draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgment. Where a submission of “no case” to answer is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the count or counts concerned.”
109. The offence took place at City Carton in Buruburu where the accused was brutally murdered while at her room. It was alleged that she was with 3 other siblings and she shared a bed with Vivian (Pw6) who said she was her cousin. The parents slept in the next room and the plot had about 10 rental rooms with one main gate.
110. The deceased parents heard screams at about 3:00am which came from the children room. Pw 3 said that she heard the deceased voice calling “mum..mum..mum..” and her husband directed her to go check on the girls since it was their room.
111. Pw 5 was the first to rush to the place, she noticed the gate was opened, the children room’s door was also open /broken although the lock was still intact. Pw 3 also rushed in response to children screams and found pw 5 who directed him to Vallary who had a knife stuck on her neck. Pw 3 removed it, pw 4 rushed to the place and also found the deceased lying with the stabbing knife neighbors gathered and helped rush her to hospital.
112. The witnesses testified that she was alive all this time and that she died on arrival at hospital. The postmortem was produced as proof of death and its cause which is not disputed. The deceased died as a result of the stabbing / attack on the night of 11/4/2019.
113. Photographs were also produced featuring the deceased body at the mortuary, the entrance of the room / crime scene, the disorganized room and blood- stained bedsheets. The Investigation Officer testified that the room was and it was as if the person was looking for something.



114. DNA was also done, the knife was identified in court by witnesses from the scene. The knife had the deceased's blood. The exhibit memo also indicates that blood samples for A1 Simon Gitau Mwaura and A2 Dominic Okoth were received. Pw 7 testified that none of the matched with the accused samples. The Cap also recovered from the scene was not stained with blood and it did not generate any DNA. Witnesses did not see the accused at the scene and as submitted, DNA evidence did not place them either.
115. However, the call data records and IMEI history unlocked from investigations of phone number 0704654486 and 0795XXX835 proves a different case. Phone number 079518835 was in the name of Laura Akinyi Odhiambo (pw1) the number was used severally by the registered owner around Buruburu area Avacado court .Pw 1 testified that her ID was used by the deceased to register a Safaricom line and the deceased used the new number .This number was used by the registered owner until 4/11/2019 when incoming and outgoing calls featured between Laura Akinyi at Avocado court and an incoming call from Nairobi Calvary temple between 23:59 and 3:39 am when the incoming call from the area.
116. The next call record is tabulated as 4/12/2019 at 8:15 am, an incoming call from Dominic Okoth at Baba Dogo Kasabuni.
117. The 2nd accused person's ID was availed and he was later traced at ... The police testified that the accused led them to his house where they found mobile phones in a sack/bag. It is here that they recovered Nokia Lumia used by the deceased and later identified by witnesses at the station. The accused defence was that he bought the phone from the 1st accused who was a phone technician at Ksh 800/=, he took them to the accused who also claimed that he bought the phone at ksh 200/=.
109. The 1st accused did not know the name of the seller but he could identify him physically. The two were arrested, the police obtained orders to detain him in order to getting someone who could identified by the accused.
110. The accused were found to be in recent possession of the deceased phone. Witnesses testified that the deceased had used the phone and that it was given to her by her boyfriend Mwanake. Pw5 the deceased mother said that she would lend it to her .The deceased used the phone as per call records and subscriber details adduced from Safaricom Ltd until 3:00am when she was found murdered.
111. The phone is the only link between the accused and the offence.
112. The doctrine of recent possession introduces a shifting burden to the defence . In the case of R vs. O'keefe {1958} O.R. 499 (C.A) determined this principle as followed.

“It is possession by an accused person of recently stolen goods that constitutes the foundation of a prima facie case against him and creates a presumption of guilt. It is a persuasive presumption which imposes on the accused person a burden of giving an explanation of his possession that might reasonably be true. When such an explanation has been given the burden then continues to rest, as always, on the Crown to prove the guilt of the accused beyond reasonable doubt.”

109. Also , the court of appeal in Malingi vs. Republic, [1989] KLR 225 held that :-

“By the application of the doctrine the burden shifts from the prosecution to the accused to explain his possession of the item complained about. He can only be asked to explain his possession after the prosecution has proved certain basic facts. Firstly, that the item he has in his possession has been stolen; it has been stolen a short period prior to their possession;



that the lapse of time from the time of its loss to the time the accused was found with it was, from the nature of the item and the circumstances of the case, recent; that there are no co-existing circumstances which point to any other person as having been in possession of the items. The doctrine being a rebuttable presumption of facts is a rebuttable presumption. That is why the accused is called upon to offer an explanation in rebuttal, which if he fails to do an inference is drawn that he either stole or was a guilty receiver.”

109. I find that the doctrine has been qualified in this case and is sufficient to place the defence to rebut the prosecution’s case.

110. The conclusion is that the prosecution has proved a prima facie case against the accused persons to warrant them to be put on their defenses. The matter shall proceed for defense.

RULING DELIVERED SIGNED & DATED IN OPEN COURT IN CRIMINAL DIVISION AT NAIROBI THIS 21/7/2025 VIRTULLY/PHYSICALLY.

M.W. MUIGAI

JUDGE

