



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Njeri & 3 others (Criminal Case E033 of 2020)
[2025] KEHC 10826 (KLR) (21 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10826 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E033 OF 2020
HI ONG'UDI, J
JULY 21, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MONICAH NJERI 1ST ACCUSED

FRANCIS MBUGUA KINYANJUI 2ND ACCUSED

FRANCIS MBUGUA ISABOKE 3RD ACCUSED

SAMSON OSEBE 4TH ACCUSED

RULING

1. Monicah Njeri alias Mama Sammy, Francis Mbugua Kinyanjui, Francis Mbugua Isaboke and Samson Osebe Isaboke hereinafter referred to as 1st, 2nd, 3rd, and 4th accused respectively stand charged with the offence of Murder contrary to section 203 as read with section 204 of the penal code. They all denied the charge and the matter proceeded to full hearing with the prosecution calling twelve (12) witnesses. At the close of the prosecution case both counsel filed written submissions
2. Dr. Titus Ngulungu (PW6) who conducted the post-mortem on the deceased's body, found the cause of death to be pulmonary fat embroilment. He explained this to have been a case where fat and dead tissue enter the blood vessels when there is excessive trauma, which blocks vessels of the lungs. The post mortem report was also supported by his colleague Dr. Wainaina. The report was produced as PEXB1.



3. The evidence of PW1 (deceased's wife) and PW2 (deceased's brother) showed that the deceased was not well. This is how the wife described him at page 10 lines 19 – 23 of the typed proceedings:

“ He was injured at the army. He got an accident. He was lame of both legs. We spoke in signs. He couldn't talk. I used to help him walk. He had been retired early on medical grounds. I would take him all the places including clinic Nairobi”
4. The evidence by PW1 and PW2 is that on 3rd October, 2020 the latter came visiting the deceased and the former. He later left with the deceased whom he took to a barber's shop while PW1 remained behind. They reached the barber's shop between 10-11am. His instructions to the barber called Isaiah were that he was going to attend to some issue and would be back. He returned in less than an hour but did not find the deceased, whom he was told had left. He embarked on a search after learning from PW1 that the man was not at home. The search that day ended at 7pm without any results. They learnt of the death on 4th October, 2020. It is therefore clear that PW1 and PW2 did not know who killed the deceased.
5. I have considered the evidence by PW3, PW4, PW5, PW7 – PW11 alongside the submissions by both the prosecution and defence counsel. The evidence by PW4 – PW5 did not assist the court on the issue of identification. Infact PW5 said there was a crowd of more than ten people at the scene and it was dark. That the person assaulting the deceased was elderly but he could not identify him.
6. Carolyn Chepkorir Ng'eno (PW8) is the Nyumba kumi chairlady of Kapkatet. She said she had received a call from one Stella Chepkemioi who told her of an arrested person who was being beaten badly. This was on 3rd October, 2020 at 6.00pm. At around 9.00pm she left for the scene after talking to the senior chief Mr. Rotich. She was accompanied by Joseph Cheruiyot (village elder). She met with the 1st accused whose home was near the scene. The 1st accused was inquiring what she should do over the matter and she got her the contact of a police officer at Njoro police station. She then left.
7. In cross examination she said at the time of incident the 2nd accused was either in Form 1 or 2 and in a boarding school. She confirmed that in October, children are in school.
8. Similarly, the evidence of Sammy Kamau (PW9) did not assist the court since he did not identify anyone at the scene where he had stopped with PW5. He only heard PW5 talk to a Mama Sammy and it was dark.
9. PW10 PC Jacqline Kimuma did not know how and why 2nd – 4th accused were arrested. She stated that she went to the scene with officers from Menengai police station and Olgigei police post on 4th October, 2020 past midnight. This was after a report at the station had been made by the 1st accused. They found the body which they inspected and saw a swelling at the back of the head with dried vomit stains. They went to the 1st accused's home which was 80M from the scene. They left the scene with the deceased's body and the 1st accused for investigations.
10. In cross examination she said Cpl Nderitu (who never testified) received a report of mob justice from Cpl Kirui and P. C. Cliff (both of Olgigei police post). She confirmed that on that night they had been shown by the 1st accused the broken window of her house.
11. Inspector Joseph Kipsang Ruto (PW6) told the court that he had been called by Cpl Kirui of Olgigei police post who reported to him that a male adult had tried to steal from the 1st accused's house. A mob had responded to her cry and killed the culprit. Upon visiting the scene Cpl Kirui and team could not align it to the 1st accused's story. He went to the scene and could not tell what had been used to kill the deceased. He saw bruises on the deceased's face.



12. He said Cpl Nderitu took photos of the scene (which were not produced). They asked the 1st accused to accompany them to the police station since her story was not believed. The next day they went to the scene with officers from Olgigei police post. They got Stella the neighbor to the 1st accused who recorded a statement. She mentioned Mbugua (son to 1st accused) as having been present when the incident occurred. They were taken to the homicide team for investigations.
13. In cross examination he stated this:

“Stella told me how the whole incident occurred. There were some burnt objects at the scene”
14. Jeremiah Misati Osumu (PW12) assisted the 1st accused by driving her to Njoro police station to report the incident and they were referred to Olgigei police post where he took her. He knew the 2nd and 3rd accused as the 1st accused’s children.
15. In her submissions, M/s Okok counsel for the prosecution submitted that from the evidence of PW3, PW7, PW8 and PW12 it was clear that the 1st and 4th accused and others assaulted the deceased on suspicion of theft. It is her further submission that the 2nd and 3rd accused were not placed at the scene by any witness. M/s Nyongesa watching brief for the deceased’s family echoed the prosecution’s submissions.
16. Mr. Ayuka submitted that the prosecution had not made out any prima facie case to make any of the accused to be placed on their defence. Counsel referred to two cases which define a prima facie case and the standard of proof. These are:
 - i. Republic V Tagjivan M. Patel & others (I) TLR 85.
 - ii. Ramanlal V Republic [1957] E.A 332
17. A prima facie case is defined to be the establishment of a legally required rebuttal presumption. It means sufficient evidence which establishes a fact unless disproved or rebutted. This is the position in the two cited cases above. Also see Anthony Ndegwa Ngari V Republic [2014] eKLR.

Analysis and determination

18. It is not disputed that the deceased was a person living with a disability and needed someone to be around him for support. This is clear from the evidence of PW1 and PW2. The deceased could not walk without support and he could not talk. What comes to mind is this, why did the police not find it necessary to bring on board the barber (Isaiah) as a crucial witness? How did the deceased leave his barber shop? Who took him away or with whom did he leave the shop as he could not walk by himself? How far was the barber’s shop from the scene? Was the deceased able to move from the said shop to the scene without support? Those are questions which remain unanswered.
19. PW8 the chairlady Nyumba kumi told this court that the lady Stella Chepkemoi called her from the scene. The report she gave her was that someone had been arrested and was being beaten badly. This was at 6.30pm. PW8 only left for the scene after 9.30pm. She never looked for the said Stella Chepkemoi.
20. PW11 who was the senior officer in this matter testified that on 4th October, 2020 he interrogated the said Stella Chepkemoi and even recorded her statement. He said the said Stella mentioned Mbugua who is the 1st accused’s son and who was at the scene. The inspector (PW11) arrested the said Mbugua but was not able to identify the said Mbugua from among the accused before the court. Before this court are two accused with the name Mbugua. So, whom did PW11 arrest between the two?



21. In cross examination he said Stella told him how the whole incident occurred. The question then is, did the prosecution not consider this Stella Chepkemoi to be a crucial witness? Why was she not called to tell the court all that she had seen and shared with PW8 and PW11?
22. It is true that PW3 stated in his evidence that when he went to the scene on the material night he did not see a broken window and only saw it later after about six (6) days upon revisiting the scene, with police officers. Under the same breath PW10 (P. C. Jacqueline Kimuma) who visited the scene the same night with other police officers said after visiting the scene they went to the 1st accused's home. While there the 1st accused showed them the window allegedly broken by the deceased who stole her shoes. The fact is that there was a broken window alleged to have been broken by the deceased. So PW3's claim that there was no broken window is not correct. The issue was whether indeed it was broken by the deceased.
23. There is clear evidence that there was a crowd at the scene of more than ten (10) people as stated by PW5. PW5 stated that the person he saw beating the deceased with a stick was a "he". So, it could not have been the 1st accused.
24. It is not clear from the evidence what the 1st and 4th accused exactly did in respect of the deceased's death. PW7 Silas Sigei said a bodaboda man tied the deceased's hands with a rope and took him towards the house of the lady who was complaining of her broken house and stolen shoes. Even on seeing all this, he did nothing but walked away. Then in court he identified the 1st and 2nd accused, as having been at the scene. This identification by him has no basis.
25. From the record he did not say who the 4th accused was and what he did. His evidence had been that there were 4 people viz; A lady (1st accused) and 3 men one being a bodaboda man. His evidence is not clear as to whether the three men were 2nd, 3rd and 4th accused, and in particular who among them was the bodaboda man.
26. There having been a crowd of people it was very important for the prosecution witnesses to tell the court what each of the accused distinctly did to the deceased that led to his death. It is unfortunate that this was never done.
27. Moreover, key witnesses namely the barber man (Isaiah) and Stella Chepkemoi and Cpl Kirui whom this court finds to have been key witnesses were never called to testify. The photos allegedly taken by Cpl Nderitu were also not produced. As admitted by the prosecution there was no scintilla of evidence adduced against the 2nd and 3rd accused. I will also add the 4th accused.
28. From the above analysis, it is clear that the evidence against the 1st accused is based on her claim that the deceased had broken into her house and stolen shoes. There is no evidence of any witness who testified on having seen her assault the deceased, or do anything else in harming him.
29. The next question is whether there is sufficient evidence to found a conviction against the 1st accused in the event that she is placed on her defence and elects to remain silent. The answer is in the negative.
30. The upshot is that the evidence presented to the court in this matter has not satisfied the required standard for proof of a prima facie case. On my part, I find all the accused persons not guilty and acquit them under section 306(1) of the [Criminal Procedure Code](#). They shall be released unless otherwise lawfully held under a separate warrant.
31. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 21ST DAY OF JULY, 2025 IN OPEN COURT AT NAKURU.



H. I. ONG'UDI
JUDGE

