



REPUBLIC OF KENYA



**Republic v Kimiri (Criminal Case 49 of 2016)  
[2025] KEHC 10700 (KLR) (15 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10700 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE 49 OF 2016**

**JM NANG'EA, J  
JULY 15, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**DAVID CHEGE KIMIRI ..... ACCUSED**

**JUDGMENT**

**Charge facing the accused person**

1. This is a very long pending case instituted way back in 2016. The above named (hereinafter referred to as “the Accused”) was on 31<sup>st</sup> August 2016 arraigned in this court on information and charge of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence state that on the 30<sup>th</sup> August 2016 at Shemeji Lodge Dundori Centre, Nakuru North Sub County, within Nakuru County he murdered Rahab Wambui Muchiri (hereinafter referred to as “the Deceased”).
2. The accused denied the offence.

**The Prosecution case.**

3. Part of the prosecution evidence was recorded before two other judges (Justices M. Odero and H.M Nyaga) who have since transferred to other work stations. This court took over the case on 5<sup>th</sup> December 2024 and directed that hearing would continue from the point the previous court left off.
4. The prosecution evidence is that on 29/8/2016 at about 11:00 p.m. the Accused and the Deceased checked into Room No. 9 of Shemeji Lodging in Ndundori Trading Centre and locked the door from inside. Shortly thereafter, the Lodging Care Taker on duty (PW1) heard the two customers quarrelling and went closer to the door. He heard the Deceased demanding of the Accused to leave the room as she was the one who had paid the charges. PW1 and another lodge staff (PW2) could hear a commotion



and fighting in the room. The Deceased started screaming and PW1 pushed open the room's window and peeped inside. The witness saw the Accused lying on the deceased with his arms around her neck squeezing it. They ordered the Accused to leave the room but he refused claiming that the deceased had "eaten" his money and switched off the lights in the room.

5. PW1 rang up the police and an officer called Mutai arrived. The Accused opened the door for him and PW1 led the officer into the room. The Deceased lay in the bed and could not talk. The officer took the Accused away but the Deceased remained in the room.
6. The following morning the Deceased was still unresponsive and it was feared that she was dead. The information was given to the police who removed the body to the mortuary.
7. Post mortem examination of the body was conducted on 2/9/2016 at Nakuru County Public Mortuary, upon identification by her relatives (PW3 and PW4). Multiple bruises and lacerations were observed on the body including on the head, neck and elbows. The Deceased also had a black left eye. There was a fracture on a bone of the neck. The Pathologist (PW6) opined that the cause of death was the multiple injuries to the head and neck with strangulation.

### **The Defence Evidence.**

8. The Accused gave sworn evidence in his defence. He told the court that on 29/8/2016 at around 8:00 p.m. he was drinking liquor at Whisper's Club in Ndundori Trading Centre. There was a confrontation between the Deceased and another man over money. At about 8:30 p.m., the Accused further testified, he and the Deceased left Whispers Club and entered Shemeji Lodge. Some men who were also in the club followed them there while insulting the Deceased. The two checked into Room No. 9 of the lodge and the men knocked the door violently. The Accused said he refused to open the door. Soon police officers came and the strangers fled.
9. The Accused further testified that he left the Deceased in the room at about 10:30 p.m. He denied being arrested by the officers saying that he was only advised to go home. He denied killing the Deceased.

### **Analysis and Determination**

10. I have perused the prosecution and defence submissions as well as the evidence on record in relation to the charge facing the Accused. The sole issue for determination is whether the prosecution has proved beyond reasonable doubt that the Accused murdered the Deceased, actuated by malice aforethought.
11. There is no direct evidence linking the Accused to the killing as none of the witnesses testified to seeing the Accused commit the offence apart from PW1 and PW2 purportedly witnessing him squeeze his neck. Determination of the case therefore wholly depends on circumstantial evidence. In *Mwangi vs Republic* (Criminal Appeal No. E054 of 2023) [2024] KEHC 3113 (KLR) 15 March 2023 (Judgment) this court explained that for circumstantial evidence to be reliable it must be inconsistent with the accused person's innocence.
12. In the case of *Ahamad Abolfathi & Another vs Republic* (2018) eKLR also cited by the Prosecution and Defence Counsel, it was elaborated that;

“Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence.”



13. In a much older case (*Republic vs Taylor, Weaver & Donoram* (1928) Cr. Application R 21), it was observed that;

“Circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that is circumstantial.”
14. In the often quoted case of *Sawe vs. Republic* (2003) KLR 364, it was stated that circumstantial evidence must satisfy three tests, namely;-

“the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”
15. As in the case of *R vs Kipkering Arap Koskei* (1949) EACA 135 Counsel further made reference to, the prosecution must also show that there existed in-culpatory facts that were incompatible with the innocence of the accused and incapable of any explanation upon any other reasonable hypothesis other than that of guilt.
16. Section 206 of the *Penal Code* provides that malice aforethought is proven by one or more of the following circumstances;-
  - a. Intention to cause death or do grievous harm whether the death actually occurs or not.
  - b. Knowledge that the act or omission causing death will probably cause the death or grievous harm to a person, whether the death is actually caused or not.
  - c. An intention to commit a felony.
  - d. An intention by an act or omission to facilitate flight or escape from custody of any person who attempts to commit a felony.
17. The prosecution does not have to prove the motive for commission of any crime, and neither is the evidence of motive sufficient by itself to prove commission of a crime by a person who possesses the motive (see Case law in *Robert Onchiri Ogeto vs Republic* (2004) KLR (1a)).
18. It is trite law that in homicide cases, death is presumed to have been unlawfully caused unless it is otherwise accidentally caused in circumstances that make it excusable (see inter alia case law in *Uganda V. Lydia Draru Alias Atim* HCT-00-CR-SC-0404 High Court of the Republic of Uganda, *Akol Patrick & Others V. Uganda* (2006) HCB (Vol. 1) 06 and the Court of Appeal for East Africa in *R V. Gusambiza s/o Wesonga* 1948 15 EACA 65).
19. In *Republic V. Gideon Wambua Kioko & 2 Others* (2019) eKLR three essential elements of the offence of murder were listed as hereunder;
  - i. The death and cause of death of the deceased.
  - ii. That the accused caused the death through an unlawful act or omission.
  - iii. The accused possessed the intention to cause harm, or kill, or malice aforethought.



20. In Republic V. Ali Suleiman Ali (2021) eKLR it was held that circumstantial evidence must always be examined narrowly because it may be fabricated to unfairly cast suspicion on another person. According to this case law, before drawing an inference of guilt the court should be sure that there are no co-existing circumstances weakening or destroying that inference.
21. The prosecution evidence places the Accused at the scene of the murder and so he was duty bound to explain how the Deceased met his death (see the judicial decision in R V. F.O.O {2021} eKLR). I find the Accused's defence on the evidence and circumstances of this case not credible. PW1 and PW2 said it was the Accused who entered the room and quarreled with Deceased after which the latter was found dead. This evidence is not discredited. The Accused was the one who was last with the Deceased before she died. The defence evidence is an afterthought as the presence of third parties at the time did not arise during cross-examination of PW1 and PW2.
22. Moreover, the Pathologist's evidence proves assault and strangulation. The nature of the injuries shows that the intention was to cause death.
23. In the premises, circumstantial evidence herein unerringly point to the guilt of the Accused. I find that the prosecution proved the charge beyond reasonable doubt and the Accused is accordingly convicted thereof pursuant to the provisions of section 215 of the *Criminal Procedure Code*.

**J. M. NANG'EA,**

**JUDGE.**

**JUDGEMENT DELIVERED THIS 15<sup>TH</sup> DAY OF JULY, 2025**

In the presence of:

Mr Wakasyaka for the Director of Public Prosecutions.

Mr. Opar Advocate for the Accused.

Court Assistant (Jeniffer).

**J.M. NANG'EA, JUDGE.**

