



REPUBLIC OF KENYA



**Republic v Lewis (Criminal Case E077 of 2021)  
[2025] KEHC 10211 (KLR) (Crim) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10211 (KLR)

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

**CRIMINAL  
CRIMINAL CASE E077 OF 2021**

**K KIMONDO, J**

**JULY 15, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MSUYA NGOLO LEWIS ..... ACCUSED**

**RULING**

1. The accused is charged with murder contrary to section 203 as read with section 204 of the *Penal Code*.
2. The Director of Public Prosecutions informs the High Court that on the 12<sup>th</sup> November 2017, at about 1900 hours at Kona Mbaya in Starehe Sub-County within Nairobi County, the accused murdered Muktar Said Ibrahim [hereafter the deceased]
3. He pleaded not guilty. The prosecution marshalled fourteen witnesses. Three of them appeared before my predecessor, Nzioka J. On 17<sup>th</sup> October 2022, and, pursuant to section 200 [3] of the *Criminal Procedure Code*, the accused elected to proceed from where the matter had reached.
4. I am now called upon to determine whether that corpus of evidence is sufficient to place the accused on his defence.
5. The Republic lodged submissions dated 10<sup>th</sup> June 2025 while those by the accused are dated 23<sup>rd</sup> June 2025.
6. Pursuant to the decision of the Supreme court in Joseph Lendrix Waswa v Republic, Supreme Court Petition No. 23 of 2019 [2020] eKLR; and, in accordance with section 9 of the Victims Protection Act, I granted leave to counsel for the victims to lodge her submissions. They are dated 15<sup>th</sup> May 2025.



7. According to the learned counsel for the Republic, Ms. Kigira, as well as the learned counsel for the victim's family, Ms. Wambua, there is sufficient direct and documentary evidence linking the accused to the homicide. Reference was made to Part B of the Sixth Schedule of the [National Police Service Act](#) and a number of precedents including *Bhatt v Republic* [1957] E.A. 332; *Nyaga Kiura v Republic* [2018] eKLR and *Republic v Tubere s/o Ochen* [1945] 12 EACA 63.
8. But according to learned counsel for the accused, Mr. Omari and Ms. Martina, the accused was at all times lawfully armed and acting "in self defence where he was saving or protecting life as per section 59 of the [National Police Service Act](#)".
9. Furthermore, the defence argues that all the evidence tendered does not connect the accused with the offence or rise to the threshold of proof in a criminal trial. Relying on the requirements of sections 203 and 206 of the [Penal Code](#), the defence contended that the prosecution failed to lay any firm foundation to require a rebuttal from the accused.
10. My finding is as follows. It bears repeating that the accused is still deemed innocent at this stage. Furthermore, the inquiry at this juncture is merely to establish if a prima facie case has been made out requiring a rebuttal from the accused.
11. I have paid heed to the evidence of some of the key witnesses. For instance, Mohamed Suleiman Adan [PW8] claimed that he saw someone pleading with a police officer who was dressed in civilian clothes. The person pleading was wearing a maroon sweater. He testified that he saw the man with a pistol shoot the person pleading "again and again".
12. When Ahmed Ali [PW2] was cross examined further on 9<sup>th</sup> March 2022 by learned counsel for the defence, he stated:

"I witnessed with my own eyes the accused Lewis shooting the deceased. I heard the first gun shot while at the Chief's camp. I was 500 metres away. I heard the 2<sup>nd</sup> gun shot when I was 5 metres away. The gun shot was from the gun of an officer. I cannot identify. The third gunshot was from Lewis, the accused, he saw the deceased alive and "finished him" with the 3<sup>rd</sup> gun shot from the accused. I am the one who confirmed the deceased was still alive."
13. Sophia Ibrahim [PW5] is a sister of the deceased. Upon cross examination by Mr. Omaiyo, she claimed that the deceased told her, in the company of her mother, [Habiba Muktar [PW3]], that "the accused had threatened him...he threatened to kill him".
14. According to Corporal Jacinta Wambugu [PW9], the accused was on duty at Kariobangi IV, V & VI and had been issued with a Jericho Pistol Serial No. 44338344 containing 15 rounds of ammunition. On 13<sup>th</sup> November 2017 he returned the weapon with only 8 rounds.
15. The ballistics examiner, Chief Inspector of Police Kenneth Chomba, examined the Jericho Pistol on 7<sup>th</sup> April 2019. He found that it was "caliber 9mm with NP marking KE KP 44338344 and designed to hold 9x19mm ammunition. It was complete and capable of firing"
16. Lastly, the death of the deceased has been confirmed by two pathologists. According to Dr Charles Muturi [PW10] the death was "due to multiple gunshots from a high velocity gun to the chest and abdomen". The second autopsy was conducted on 30<sup>th</sup> January 2018 by Dr Johansen Oduor [PW13] and followed an exhumation order. According to him, the "bullets were fired from the back going to the front. This is because of inner beveling – found on front shoulder blade".



17. Upon the digest of that evidence; and, well guided by the precedents in *Bhatt v Republic* [1957] E.A. 332 and *R v Kipkering arap Koske & another* 16 EACA 135 [1949], I find that the Republic has established a prima facie case calling for a rebuttal from the accused person.
18. Accordingly, under the provisions of section 306 [2] of the *Criminal Procedure Code*, I hereby place the accused person on his defence.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF JULY 2025.**

**KANYI KIMONDO**

**JUDGE**

Ruling read virtually on Microsoft Teams in the presence of: -

The accused.

Ms. Kigira for the Republic instructed by the office of the Director of Public prosecutions.

Ms. Martina for the accused instructed by Danstan Omari & Associates Advocates.

Ms. Wambua for the victim's family instructed by Betty Wambua Advocate.

Ms. Wanjiru for IPOA.

Mr. E. Ombuna, Court Assistant.

