



REPUBLIC OF KENYA



KENYA LAW
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**Republic v John (Criminal Case E031 of 2019)
[2025] KEHC 10709 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10709 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE E031 OF 2019**

TM MATHEKA, J

JULY 11, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

BENSON KASYIMA JOHN ACCUSED

RULING

1. The accused person Benson Kasyima John was charged with murder contrary to section 203 as read with Section 204 of the *Penal Code*. The particulars are that on 1/12/2019 at Wote town within Makueni County murdered one Joyce Nduku Masisya. He pleaded not guilty on 6/2/2020.
2. The accused pleaded not guilty.
3. The prosecution called 8 witnesses.
4. PW8 Mary Kanini worked with the deceased at Kwa Songolo hotel in 2017 and did not know that the deceased was working at the Guest House, but only heard about her death the day after she was killed. She did not know who killed her.
5. PW7 Joseph Maseki Nguthi was the employer of the deceased told the court that she was a casual employee. On 1st December 2019 he went to the business to check records then went home. He received a call from his night watchman that his colleague was in room no. 3 appearing dead. He went there and found the police there already . He saw the body of the deceased on the body covered with a blanket . He said that it appeared like she had been slaughtered . He did not know what had led to her death.
6. PW5 no. 64606 was CPL Paul Maina from DCI Head Quarters told the court that he was the investigating officer The murder was at Central Guest House at Wote on 1st December 2019. He visited the scene. Found the body and the knife at the scene. Took over the body to the mortuary, and later recorded statements. The I.O learnt from the statements that he wrote that the accused might have



- killed the deceased. He conducted investigation and by collecting DNA evidence from the scene and from the accused, he said he had a scratch on the hand and the face. That the accused consented to the blood swabs from him. He also subjected the accused's phone to cybercrime
7. He said witnesses told him that accused lived with deceased as husband and wife and they had quarrels most of the time. That the two had a child and the accused used to go to the deceased's place of work i.e., Central Guest House where she worked as a cleaner to demand for the child and make commotion.
 8. PW4 Dr. Alex Makau Muia was the Pathologist who conducted the post mortem examination on 10th December 2019. He confirmed that deceased was in her 20's, she had stab wounds, cut wounds on neck area - completely severing the trachea, the right jugular vein – cause of death – respiratory arrest secondary to severed trachea with sharp object, severe hemorrhage to severed jugular vessels.
 9. PW3 Susan Wanjiru Ngugi was the Government Analyst – she examined all the exhibits sent to her for DNA analysis: blood-stained Jacket, t shirt , knife, bra, skirt, and a long trouser that did not have blood stains. She was also brought blood swabs in cotton wool from the suspect and nail clips from the deceased.
 10. The skirt, bra, knife, produced DNA that matched that of the deceased from her nail clippings.
 11. The cotton wool swabs did not produce any DNA profile, the DNA profile from the T shirt did not was of an unknown male , did not match any of the DNA profile and there was no sample from the accused – as reference sample.
 12. PW2 was no. 86187 CPL Peter Ndambuki No. 86187 – the scenes of crime personnel testified on behalf of his retired colleague no. 46623 Sgt Paul Kiilu who took photos of the scene. PW2 produced the 12 photos of Room no. 3 at the guest house where the deceased was found dead.
 13. PW1 Benjamin Kiinyi Kimeu was the caretaker at the plot where the accused and the deceased lived. He said they were living together. As the caretaker of their rental houses, he knew the accused as the actual tenant. By 14th August 2018 when rent had not been paid, he went to find out what had happened . Joyce (now the deceased) told him that she would pay the rent herself. He however asked her to call him and he came , they sat and talked , he counselled them , and even recorded the discussion in a book. That they agreed to part ways the woman remained as his tenant for like three months she paid the rent , but in third month he did not see her for two days and he later learnt that the deceased died.
 14. On the foregoing evidence prosecution closed its case.
 15. The issue is whether the prosecution has established a case to warrant the accused person being put on the defence .Taking into consideration section 306 of the [Criminal Procedure Code](#) what option can this court apply?
 16. Section 306 provides inter alia
Close of case for prosecution
 - (1) 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 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.
 - (2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to



make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.

17. If the court finds under s. 306(2) the court is discouraged from giving a detailed ruling. In the otherwise the court has to give its reasons.
18. For a prima facie case the prosecution must establish the ingredients of murder; death of a person , cause of death, by the accused person , unlawfully , with malice afore thought.
19. The death, cause of death of the deceased and the fact that it was unlawful is not in doubt.
20. The question is whether it is established that the accused committed the offence and with malice aforethought.
21. The deceased was killed in the most brutal way adding to the list of women killed in femicide related cases.
22. However - it is also evident from the I.O that the prosecution charged the accused person for the reason that she and accused were living together as husband and wife. And that there were allegations that they quarreled. It was also alleged that they had a child and the accused would go to the Central Guest House to demand their child from the deceased.
23. It is also evident that the investigating officer told the court that he was told by witnesses about the alleged relationship and quarrels by witnesses.
24. However, the only witness to the alleged relationship is PW1 – who did not witness the murder/or anything related to the murder. He spoke about a disagreement in 2018.
25. The allegation by investigating officer is that accused would raise commotion at deceased’s place of work was not supported by any evidence form any witness. Even PW7 the employer of the deceased was not aware of any such incident because he never spoke about it. In addition, the Prosecution did not call the watch man who could have witnessed the alleged commotions. Without any collaboration that remains as hearsay and unreliable.
26. There was DNA evidence but that evidence did not attach the accused to the brutal gruesome murder.
27. The phone subjected to the cyber crime department was not produced as evidence to connect the accused to the deceased person.
28. The I .O did not conduct any other investigation that could pin the accused to the offence.
29. In *Ramanlal Trambaklal Bhatt v R* [1957] EA 332 at 334 and 335, the court stated as follows:

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction.” This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence”. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence...It is may not be easy to define what is meant by a “prima facie case”, but at least it must mean one on which a



reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”

30. In the circumstances of this case, it is evident that the accused was charged as a suspect but without sufficient evidence to establish prima facie case.
31. In the circumstances, s. 306(1) of the [CPC](#) applies to this accused. I make a finding of not guilty and acquit him accordingly.
32. He is to be set at liberty unless otherwise legally held.

DATED, SIGNED AND DELIVERED THIS 11TH DAY OF JULY 2025.

MUMBUA T MATHEKA

JUDGE

CA Chrispol

Accused present

Ms. Onyango for the accused

Mr. Kazungu for that state

