



**Republic v Wanjiku (Criminal Case 23 of 2020)
[2025] KEHC 9817 (KLR) (Crim) (8 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9817 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 23 OF 2020
K KIMONDO, J
JULY 8, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

VICTOR MACHARIA WANJIKU 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 informed the High Court that on the night of 11th and 12th February 2020 within Nairobi Central Business area, Nairobi County he murdered John Wachira Kariithi [hereafter the deceased].
3. The prosecution called five witnesses. Four of them appeared before my predecessor, Ogembo J. Upon explanation of the rights under section 200 [3] of the *Criminal Procedure Code*, the accused elected to proceed from where the matter had reached. I heard the final witness on 16th February 2025.
4. Learned counsel for the defence, Mr. Michuki, filed comprehensive submissions dated 7th April 2025. The Republic equally lodged submissions dated 25th April 2025 under the hand of Ms. Kigira, Principal Prosecution Counsel.
5. The accused's case is that the entire case is built on scanty circumstantial evidence: That merely because the deceased used the accused's cell phone at 21:43 hours; or, had transported him to the Central Business District, then he must be the last person seen with the deceased. Learned counsel submitted that the duty to prove the charge beyond reasonable doubt never shifted to the accused; and, that considering where the remains were found, it is impossible to tie the accused to the murder.



6. But according to learned counsel for the Republic, the accused was the last person to be seen with the accused. He also had a clear motive to kill him because he failed to raise the fare. Learned counsel argued that the combined evidence of PW1, PW3 and PW4 shows that the deceased and the accused travelled together from Ruai, went past State House Road and stopped at Rehani House. Here, the deceased inserted his sim card into the accused's cellphone and made some communication. According to the prosecution, the line was used by the accused thirty minutes later at Saika.
7. In order to answer the question whether the evidence is sufficient to place the accused on his defence, I have kept in mind that there was no eye witness and that the prosecution's case revolves entirely on circumstantial evidence. Circumstantial evidence is still good evidence.
8. According to Police Constable Gilbert Lang'at [PW1], he and other officers found the body in a field at Ngara Railway Housing. There were injuries on the head, back and legs. Other officers at the scene included Richard Kalaine [PW3]. The scene was documented and the body removed to the City Mortuary.
9. PW1 formed the opinion that this was not the primary scene of the murder. Fingerprints were forwarded to the National Registration Bureau which established it was the deceased. The witness stated that the deceased's mobile phone was active on the material night from 21:43 hours to 21:45 hours within Rehani House. When the accused was later apprehended at Chokaa area, the police recovered from him a phone that matched the details of the last device used by the deceased.
10. When PW1 interrogated the accused, he said he met the deceased at Ruai By-pass and ferried him to State House Road on agreed fare of Kes 1500 but which the deceased failed to raise. He said that that the accused told him that the deceased asked to be taken to an Equity Bank agent at Rehani House, but that his card was expired. That is when the deceased requested to use the accused's mobile device into which he inserted his sim card. The deceased tried to contact his friends to send him the fare without success. PW1 said that the accused claimed that he left the deceased in the city centre and proceeded to Chokaa.
11. Upon cross examination, he said that the police arrested the accused at Chokaa based on intelligence primarily through call data. The data showed that the accused had gone to Chokaa, Githurai, Komarock and Ruai. From Rehani House, he had proceeded to Saika at 22:22 hours, about 37 minutes later. The police never requested for CCTV footage around Rehani House. He clarified that the handset recovered from the accused belonged to the accused; and, that the deceased only used it for two minutes which was consistent with a borrowed phone. The witness claimed that when he took the suspect to the city, he failed to show him the exact place he left the deceased at Rehani House.
12. That version was largely corroborated by Police Constable Richard Kalaine [PW3]. He also produced photographs taken at the scene and accompanying report [exhibits 6 & 7].
13. There is then the evidence of Corporal Jonathan Limo [PW4]. He is seconded to Safaricom Liaison office as data analyst. On 19th March 2020, he received a letter from DCI Starehe [exhibit 10] seeking subscriber details, incoming and outgoing call data for the period 1st January 2020 to 15th March 2020 for lines 0791-332951 and 0706241557. He surrendered the data to the police [exhibits 11, 12 & 14]. On 24th March 2020, he also extracted call data records and subscriber details as further requested by the police. He produced the certificate required sections 106A and 106B of the *Evidence Act* [exhibit 15].
14. PW2 was Edwin Mureithi Kamau, a brother of the deceased. He and his parents identified the body at the City Mortuary. The autopsy was conducted by Dr. Peter Ndegwa on 16th April 2020. He concluded that the cause of death was "head injury due to blunt force trauma".



15. My finding is as follows. Section 203 of the *Penal Code* provides that any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
16. There are three key ingredients that must be present in the offence of murder: first, the prosecution must prove beyond reasonable doubt the death of the deceased and the cause of that death; secondly, that the accused committed the unlawful act that led to the death; and, thirdly, that the accused was of malice aforethought. Malice aforethought is the mens rea or the intention to kill another person.
17. There is absolutely no doubt about the death of the deceased. The body was seen by PW1, PW2 and PW3. From the evidence of PW2 as well as the report by the National Registration Bureau [exhibit 4], it was that of the deceased. Doubt is completely erased by the post mortem form [exhibit 8] produced by PW5. The pathologist concluded that the cause of death was “head injury due to blunt force trauma”.
18. I thus readily find that the death was unlawful. However, there was no eye witness to the murder. The entire case for the prosecution is thus built atop circumstantial evidence. In *R v Kipkering arap Koske & another* 16 EACA 135 [1949] the court held-

In order to justify the inference of guilt, the inculpatory fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt

19. The incriminating evidence in this case is from PW1, PW3 and PW4 and based largely on the call data or what the accused told the police. The accused did not deny that he and the deceased were together at Rehani House or that the deceased inserted his sim card into his cellphone. It is also not in doubt that when the accused was arrested at Chokaa, he was still in possession of his [accused’s] line.
20. What is material is that the accused told PW1 and PW3 that he left the deceased at Rehani House. The body was discovered early the following morning by the police at a field neighbouring Ngara Railway Housing. It had injuries to the head, back and legs. According to PW1 and PW3, there was no blood at the scene. They both reasonably concluded that the murder took place elsewhere and the body dumped at the scene.
21. The incriminating evidence here thus is two-fold: Firstly, that the accused transported the deceased from Ruai to State House road and eventually to Rehani House. this last stop was for the deceased to withdraw money to pay for the ride but he failed to do so. Secondly, there is clear evidence that for about two minutes between 21:43 and 21:45 hours at Rehani House, the deceased inserted his sim card into the accused’s cellphone and communicated with other persons.
22. But in a criminal trial, the standard of proof is beyond any reasonable doubt. As things now stand, there is no reliable evidence proving that the accused was the last person seen with the deceased before he was murdered. In fact, it is not certain where or the exact time he was killed. The call data evidence is thus a poor basis to conclude that he killed the deceased merely to recover the fare for the bodaboda ride.
23. Paraphrased, the Republic has failed to prove both the actus reus and malice aforethought. It may well be that the accused was hiding something. And there are suspicions that he may have had a hand in the homicide. But the point to be made is that there is no evidence to convict if he opts to keep silent.
24. The law on that subject was succinctly captured in *Bhatt v Republic* [1957] EA 332 at 334-

It 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. [underlining added]



25. From my analysis of the evidence and the legal authorities, I am not persuaded that the Republic has proved a prima facie case against the accused sufficient to place him on his defence.
26. Accordingly, under the provisions of section 306 [1] of the *Criminal Procedure Code*, I enter a finding of not guilty. The accused is hereby acquitted.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF JULY 2025.

KANYI KIMONDO

JUDGE.

Ruling read virtually on *Microsoft Teams* in the presence of-
Accused.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Michuki for the accused instructed by K. Michuki Law Advocates.

Mr. E. Ombuna, Court Assistant.

