

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CRIMINAL CASE NO. 29 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

ERIC MUNGERA ISABWA *alias* CHAIRMAN.....1ST ACCUSED
RAPHAEL KIMANI GACHII *alias* KIM BUTCHER.....2ND ACCUSED
MUSTAFA KIMANI ANYONI *alias* MUSTO.....3RD ACCUSED
STEPHEN ASTIVA LIPOPO *alias* CHOKORE.....4TH ACCUSED
JANE WANJIRU KAMAU *alias* SHIRO.....5TH ACCUSED
MARGARET NJERI WACHIURI.....6TH ACCUSED
SIMON WAMBUGU GICHAMBA.....7TH ACCUSED

RULING

1. The accused persons are charged with four counts of *murder* contrary to section 203 as read with section 204 of the **Penal Code**.
2. The particulars are that on the night of 6th and 7th February 2015 along Kenyatta Avenue within Nairobi County, they jointly murdered *Hon. George Mukuru Muchai, No. 92634 PC Samuel Kimathi Kailikia, No. 81813 PC Samuel Lekakeny Matanta and Stephen Ituu Wambugu* (all hereafter referred to generally as *the deceased*).
3. The Republic called 37 witnesses to the stand. The list of witnesses can be a little confusing. For instance, although *Inspector Jackson Cheboi* first took to the stand on 2nd March 2016 as PW1, the court (*Wakiaga J*)

expunged his testimony because the defence had not been supplied with the CCTV evidence in advance. When he was recalled on 13th December 2022, he was now numbered as PW32. *Anthony Mburu Mwangi* should thus be PW1 while *Susan Nyawira Muchai* should remain as PW3.

4. I am now called upon to determine whether the prosecution has marshalled *sufficient* evidence that calls for a *rebuttal* from each of the accused persons.
5. Ordinarily, a ruling of this nature would be fairly brief. But considering the number of witnesses, the years that have passed, the sheer volume of evidence, and the elaborate submissions by learned counsel, it would be unfair for the court to issue a summary ruling.
6. I should point out at the earliest that the accused persons are also charged in *separate* proceedings for *robbery with violence* before the Chief Magistrates Court at Nairobi. Some of the witnesses are *common* in these parallel trials. For that reason, I have restrained myself from making conclusive statements on evidence relating to the *alleged robbery*; and, focused principally on the counts of *murder* before the High Court.

7. Learned prosecution counsel filed detailed submissions dated 24th June 2025. Those for learned counsel for the 1st accused are dated 21st July 2025. The submissions for the 2nd accused are dated 24th June 2025 while those for the 3rd accused are dated 24th June 2025. Those by the 5th and 7th accused persons are dated 23rd June 2025 with annexed case digest. However, learned counsel for the 4th and 6th accused persons opted *not* to lodge submissions at this stage.
8. In a broad summary, the pith of the prosecution's case is that a *prima facie* has been well laid out against all the accused persons.
9. The defence on the other hand contends that the evidence falls far short of the standard of proof; that there is no proof of a common enterprise; that there was no positive identification of the accused; that the evidence is riddled with contradictions and inconsistencies; and, that the documentary and electronic evidence is unreliable. In a synopsis, I was urged to find that there is no need for a rebuttal and to acquit all the accused at this early stage.
10. Reliance was made on a number of precedents including, **R v Morabito** (1949) SCR 172, **R v Abramovitch** [1914-15] All ER 204 and **Karuma, Son of Kaniu v R** [1955] A. C. 236.

11. Upon closer scrutiny of the submissions by the 1st, 2nd, 3rd, 5th and 7th accused persons, they are all identical in every word including the cases cited above, the footnotes and even the font! The only difference seems to be the reference to each accused, the date, the counsel signing and the additional case digest by the 5th and 7th accused persons. I cannot tell for sure who drew the original text. But I must say that I am disappointed by the obvious copying and pasting.
12. I have paid heed to the testimony by *select key witnesses*. It is a blend of direct, circumstantial and documentary evidence. For reasons that will become self-evident, I will *not* get into a deep analysis of *all* the prosecution's evidence.
13. *Ronald Nyangaresi* (PW4) was a newspaper vendor operating around the Kenyatta Avenue. He testified that at about 3:40 a.m., a motor vehicle stopped and one of the occupants said "*Kisii, bring newspaper*". He said the person was a regular customer for 10 years and addressed him by that name. He later on learnt that he was, *Muchai* (deceased) a Member of Parliament. He gave a copy of the *Nation, Standard* and *Star* newspapers to the driver who passed them on to the deceased.

14. As he prepared to pass on a copy of the *Nairobi* newspaper, another saloon car, passed by close to that of the deceased. Someone who was wearing a mask disembarked from that car with a gun and shots rang out. He said the person emerged from the co-driver's side. PW4 scampered for dear life towards Uhuru Highway. He said in the relevant part-

The said motor vehicle was too close with the deceased's motor vehicle; about one meter in front. It came from my side and blocked the deceased's motor vehicle in front. The person had covered the face and the hands with "mask" some open eyes and nose. He was in a long trouser and a shirt. He came carrying out a big gun so I did not check how many people were in the car. I started to run away causing me to fall down and I lost my tooth.

15. According to Muchai's wife, *Susan Nyawira Muchai* (PW3) and her sister, *Judy Njoki Ngige* (PW2), they were in a motor-vehicle registration number KBX 987L ahead of the deceased's vehicle KBF 357D. The family had left Galileo Lounge in Westlands at 2:45 a.m. heading to their Kamulu home.

16. At Kenyatta Avenue, they noticed that the deceased had stopped. They also stopped. Then shots rang out. PW3 said she did a U-turn, got to the roundabout and stopped behind the deceased's vehicle. The

windows of KBF 357D were shattered and the four occupants had been shot.

17. According to *Michael Ngatia Gituto* (PW10), on 6th February 2015 at 10:00 p.m., he was driving motor vehicle KBF 796A . It was a Nissan Sunny Saloon Beige in colour. He stopped at a kiosk or petrol station along Waiyaki Way. The witness wavered on this point as he at times said it was outside *Miako Hardware* and then changed it to *Shell Petrol Station*. He said that his wife, *Jane Njoki Ngatia* (PW22) disembarked from the car to buy some fruits or groceries.
18. PW10 was then confronted by an armed person who forced him to open the driver's door and directed him into the back seat. Three other men entered the car. The car was driven towards Kikuyu and branched onto a rough road. He was then locked in the boot. According to PW10, it is his car that was used to block that of PW7 and PW8. The assailants left him in the boot and he was later rescued by officer Wilson Koskei (PW30).
19. *Gladys Waithera* (PW7) was driving motor vehicle KBE 464L with her sister, *Irene Wambui* (PW8). They were heading home via Kawangware and eventually joining the Nairobi-Nakuru highway. As they waited for the gate to be opened, another car blocked them from

behind. Someone emerged with a “big gun” or “long gun” and forced them into the back seat. They were sandwiched between two men who blindfolded them. PW7 said that she was masked by the 3rd accused. The man with a gun sat at the front passenger’s seat.

20. They were eventually told to *“jump over the back seat into the boot and were covered with mats”*. In the course of the night, the car would make occasional stops. At one point, the car stopped, someone came out and they heard four or five gunshots. Soon after that the car sped off. The ladies were eventually left stranded at Kamandura near Tigoni.

21. When cross-examined by *Mr. Wakaba*, learned counsel for the 4th accused, PW7 stated-

I cannot tell the number of stop overs we had made before the gun shot, there were two stop overs after the gun shot. We were on a rough road before the gun shots. After the gun shot it did not take long before we were dropped off at Kamandura near Tigoni

22. During subsequent police identification parades, PW8 identified the assailant who had a “long firearm” as the 1st accused; the 2nd accused as the one who was driving; and, the 4th accused as the one initially seated next to her on the back seat. I should point out that the

manner and outcomes of the identification parades are seriously contested by the defence.

23. For instance, when PW7 was cross-examined by *Mr. Olando*, she said that her eyes “met with the carjacker in a flash. I picked something on them. I picked the eyes of 2nd accused. 3rd accused’s hands are soft. Accused number 4 had strong arms. Accused number three kept on holding me”. This is not the most appropriate stage to make conclusive findings on that issue.

24. The timelines of the journey by PW7 and PW8 were also questioned by learned counsel for the 2nd accused, *Mr. Ongaro*. He submitted that if it is true that PW10 was carjacked at 22:00 hours on 6th February 2015, and if it is also true that PW7 and PW8 were carjacked at their gate on 7th February 2015, then the trip home by PW7 and PW8 exceeded one and a half hours for a journey of only 24 kilometres.

25. Like I said above, the issue of *identification* of all the accused was seriously contested throughout the trial. For instance, learned counsel *Mr. Olando* referred to the evidence of PW29, *Alice wangui Ngige*, the landlady of the 2nd accused, and who testified that nothing was recovered from house number No. 18 at Al- Joan Enterprise. He also

submitted that PW36, *Sgt Moses Otiu*, confirmed there was no such inventory.

26. The police were also assailed for lack of scrupulousness in gathering evidence and poor handling of the exhibits. For instance, there was no dusting or fingerprinting of the above motor vehicles or at any of the scenes of the robberies or homicide.

27. However, and as I stated at the beginning, at this stage, all that the court is required to do is to establish whether a *prima facie* case has been laid. Paraphrased, whether there is evidence sufficient to convict if the accused were to elect to remain mute. See ***Bhatt v Republic*** [1957] E.A. 332 at 334. Fundamentally, at this juncture, the accused are still deemed innocent.

28. There is then the evidence of the protected witness known as “A” (PW5). He is a taxi driver. The material part of his evidence was that he knew the 3rd accused well as “Musti”. On the night of 6th February 2015 at 3:30 a.m., the 3rd accused hired him saying “*he had a friend shot somewhere and wanted us to go rescue him*”. By the end of the assignment, he was carrying four men in the car including the 3rd accused.

29. When PW5 inspected the car later, he found a metallic object which he gave to the police. It turned out to be a gun safety pin or safety catch (exhibit 2). Based on call data analysis, the timelines in the evidence of this witness have been challenged by the 3rd accused.
30. I have also considered the evidence of *IP Abisalom Kagasi Maleya* (PW33). He said that following “some intelligence”, he and his team proceeded to Toll Station Ruiru and arrested the 1st and 3rd accused persons. The witness claimed that the 3rd accused revealed to the police that the culprits were *Mustafa Kimani Anyoni alias Musto, Stephen Astiva Lipapo alias Chokole, Eric Munyera Isabwa alias chairman and Raphael Kimani alias Kim Butcher*.
31. The witness said that the 3rd accused led them to the house of the 1st accused located at Kinoo 87A Kiuru. The door was answered by the 6th accused, *Margaret Wachiuri*, who said she was the “wife” of the 1st accused. PW33 said that they discovered the 1st accused hiding under the bed. Upon a search in the bathroom, he saw “*a blue bag....like that of a guitar or hockey bag.....in the bag there was a G3 rifle*”.
32. I have also looked at the evidence of PW13, *Alex M. Mwadawiro*, the ballistics examiner and that of PW32, *C. I. Jackson Cheboi*, who produced some CCTV footage. It included recognized number plates of

35 vehicles taken from cameras mounted near or around the scene at Kenyatta Avenue.

33. Lastly, there are the four autopsy reports by *Dr. Oduor Johansen* (PW35) confirming the death of all the deceased. In his opinion, the cause of death in each case was gunshot wound(s) “*from a high velocity firearm at close range*”.

34. Upon the digest of the evidence of *all* the prosecution witnesses 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 against the 1st, 2nd, 3rd and 4th accused persons. Accordingly, under the provisions of section 306 (2) of the **Criminal Procedure Code**, I place the four on their defence.

35. I will now turn to the evidence against the 5th, 6th and 7th accused persons. Like I stated, *IP Maleya* (PW33) testified that following “some intelligence”, he and his team proceeded to Toll Station Ruiru where they arrested the 1st and 3rd accused persons. The two then led them to the house of the 1st accused. The witness said as follows in his evidence in chief-

It was at 2:00 p.m. We knocked at the door. We heard footsteps moving in the house. We knocked a second time.

A woman came and opened the door. We asked for her name. she said she was Margaret Wachiuri. We asked her for the whereabouts of Eric Munyera. She did not disclose to us where he was. We asked who Eric Munyera was. She said he was her husband.

36. I have combed through the evidence and the only other evidence tying the 6th accused to the homicide is that of the investigating officer, *Sgt Moses Otiu* (PW36). Days after the homicide, a sim card for line 0719593259 was inserted into the stolen mobile phone of PW8. It was traced to *Oscar Inyanje* who was now arrested. He claimed he had pawned his phone as security for Kshs 200 borrowed from *Stephen Maina Kuria* and that it was *Kuria* who inserted his line into PW8's cellphone.

37. When *Kuria* was arrested he said that he went to the house of the 7th accused (*Gichamba*) where he found various mobile phones. He picked up one and inserted his sim card. The 7th accused told him the phones "*ziko na goli*". He removed the sim card. That is how the 7th accused was also arrested. He in turn said the phones were given to him by *Margaret Wachiuri* and *Mustapha* (the 3rd and 6th accused). The phones were analyzed and geo-located. They were traced to *Murera Farm* on the 14th or 15th February 2015.

38. According to this witness, the Flying Squad went there and arrested the 3rd and 6th accused who were found in the house of the 4th accused at Murera Farm. I think the investigating officer made an erroneous reference to the 6th accused on that aspect. Like I stated earlier, it is *IP Maleya* (PW33) who arrested the 6th accused from the house of the 1st accused at Kinoo 87A Kiuru, a fact which is corroborated by PW16, *Ssgt Francis Singila*.

39. I am fortified in that finding because PW16 was emphatic that-
Upon interrogation, Gichamba, the 7th accused claimed the two handsets Nokia and Huawei were brought for charging in his house by one Mustafa Kimani and a lady Jane Wanjiru (Shiro) [5th accused] for charging. He gave us the contact of Mustafa as 0703665199 and for Jane Wanjiru 0750278840

40. PW16 proceeded to interrogate the 5th accused. On 15th February 2015 at about 4:00 p.m., he went to her house at Kangemi and searched it. Outside her doorstep, the police recovered 2 rounds of 9mm (exhibit 76) buried there. From the inventory, and the cross examination by learned counsel, *Mr. Wokabi*, the house of the 5th accused was in a row of other houses.

41. So much so that the 6th accused's connection is primarily being founded on the fact that she was in the 1st accused's house or her admission that she was the wife to the 1st accused. The latter fact is

contested by the defence. There is hence no clear-cut evidence that she was an accomplice in the homicide.

42. From the prosecution's evidence I have highlighted in paragraphs 37 to 40 of this ruling relating to the 5th and 7th accused, I cannot say with confidence that it is sufficient to support the charge of murder if the two *opt* to remain silent. It *may* perhaps support a charge for other offences. But like I stated at the beginning, it would be prejudicial to make a *conclusive finding* on that issue as *all* the accused are being tried separately by the Magistrates Court at Nairobi on a charge of robbery with violence.

43. 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 5th, 6th and 7th accused persons killed or were party to the killing of any of the four deceased persons. Fundamentally, the evidence does not reveal malice aforethought. Paraphrased, there is *no* sufficient evidence to *convict* if the 5th, 6th and 7th accused persons elect to remain mute.

44. The law on that subject was succinctly captured in ***Bhatt v Republic*** [1957] E.A. 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]

45. It follows that that the Republic has failed to prove a *prima facie* case against the 5th, 6th and 7th accused persons sufficient to place them on their defence for murder. Accordingly, under the provisions of section 306 (1) of the **Criminal Procedure Code**, I enter a finding of *not guilty* against the 5th, 6th and 7th accused persons and the three are hereby *acquitted*.

46. In summary and for the avoidance of doubt, my final orders are as follows-

a) The Republic has established a *prima facie* case against the 1st, 2nd, 3rd and 4th accused persons (*Eric Munyera Isabwa alias Chairman, Raphael Kimani Gachii alias Kim Butcher, Mustafa Kimani Anyoni alias Musto and Stephen Astiva Lipopo alias Chokere*). Accordingly, under the provisions of section 306 (2) of the **Criminal Procedure Code**, I place the four on their defence.

b) The Republic has *failed* to establish a *prima facie* case against the 5th, 6th and 7th accused persons. Accordingly, under the provisions of section 306 (1) of the **Criminal Procedure Code**, I enter a finding of *not guilty* against the 5th, 6th and 7th accused

persons (*Jane Wanjiru Kamau alias Shiro, Margaret Njeri Wachiuri and Simon Wambugu Gichamba*) and the three are hereby *acquitted*.

It is so ordered.

DATED, SIGNED and DELIVERED this 23rd day of September 2025.

KANYI KIMONDO
JUDGE

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

All the accused persons.

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

Mr. Wokabi holding brief for Mr. Wachira the 1st accused instructed by SG Wachira & Company Advocates.

Mr. Wokabi holding brief for Mr. Olando the 2nd accused instructed by Olando Were Haron Advocate.

Mr. Ongaro for the 3rd accused instructed by Stephen Ongaro Advocate.

Mr. Wokabi for the 4th and 6th accused persons instructed by Wokabi Mathenge & Company Advocates.

Mr. Wokabi holding brief for Ms. Nyamongo for the 5th and 7th accused persons instructed by E. B. Nyamongo Advocate.

Mr. Khaminwa, SC for the victims' family instructed by Khaminwa & Khaminwa Advocates.

Mr. E. Ombuna, Court Assistant.