



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Tharamba & 5 others (Criminal Case 53 of 2016)
[2023] KEHC 18651 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 18651 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 53 OF 2016
EM MURIITHI, J
FEBRUARY 16, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

MIRITI M'THUMATIA THARAMBA 1ST ACCUSED

FRANCIS MWENDWA 2ND ACCUSED

ROMANO MUGAMBI 3RD ACCUSED

JULIUS KIRIMI M'MWITARI ALIAS MALAYA 4TH ACCUSED

PAUL KAILEMIA NGEERA ALIAS ALQAEDA 5TH ACCUSED

JOSEPH KANYUITHIA IMOTI 6TH ACCUSED

RULING

1. The accused are jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence were that they “On the 19th day of August 2016 at Ntulele Sub-location, Buuri location in Tigania East South Sub-County within Meru County, jointly murdered George Kauyuri.”
2. The accused persons pleaded not guilty to the charge and the matter proceeded to trial, the prosecution calling 11 witnesses to prove the charge.
3. As recorded by the Court on March 22, 2021 the case against the 5th Accused Paul Kailemia Ngeera was terminated upon confirmation of his death in custody.
4. The Court has considered as required under section 306 of the *Criminal Procedure Code* whether there is the evidence that the accused persons or any of the accused persons committed the offence.



5. Having considered prosecution evidence against the ingredients of the offence of murder on the alleged involvement of the accused persons in the offence, the Court finds that as regards the 1st, 2nd, and 4th accused, in the words of section 306(1) of the Criminal Procedure Code, there is evidence that the accused persons committed the offence.
6. As regards the 3rd Accused Romano Mugambi and the 6th Accused Joseph Kanyuithia Imoti, there was no evidence from the eye witness accounts of the Prosecution witnesses, and the Court gives the benefit of doubt to the accused. However, at this stage, as guided by the need not to prejudice the fair trial of the other accused person(s) in cases of multiple accused, the Court does not exhaustively discuss the merits of the case(s) against the 3rd and 6th accused who are acquitted for want of prima facie case at the close of the evidence for the Prosecution.
7. The detailed cases against the accused who are acquitted at the close of evidence for the Prosecution shall be discussed in the full judgment at the end of the trial.
8. Accordingly, the court having found that a prima facie case for the offence of murder contrary to section 203 as read with 204 of the Penal Code has not been established against the 3rd Romano Mugambi and 6th Accused Joseph Kanyuithia Imoti, a finding of not guilty will be entered on the said accused persons pursuant to section 306 (1) of the Criminal Procedure Code.

Orders

9. Consequently, as regards the 3rd Romano Mugambi and 6th Accused Joseph Kanyuithia Imoti, against whom no prima facie case has been established on the evidence produced by the Prosecution, a finding of not guilty is entered pursuant to section 306 (1) of the Criminal Procedure Code and they are, consequently, acquitted and there shall be an order for their immediate release, unless they are otherwise lawfully held.
10. The 1st, 2nd and 4th Accused, that is Miriti M'thumatia Tharamba, Francis Mwendwa and Julius Kirimi M'mwitari alias Malaya, respectively, are put on their defence in accordance with section 306 (2) of the Criminal Procedure Code, and their rights thereunder shall be explained.

Order accordingly.

DATED AND DELIVERED ON THIS 16TH DAY OF FEBRUARY, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. Mutegi for 1st & 2nd Accused.

Mr. Kabaale for 3rd Accused.

Mr. Otieno for 4th Accused.

Mr. C. Mbaabu for the 5th Accused.

Mr. Kaimenyi for the 6th Accused.

Ms. B. Nandwa Prosecution Counsel for the State.

