



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Gititu (Criminal Case 32 of 2018)  
[2023] KEHC 1616 (KLR) (10 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1616 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE 32 OF 2018  
MM KASANGO, J  
MARCH 10, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**WALLACE KANIARU GITITU ..... ACCUSED**

**JUDGMENT**

1. Wallace Kaniaru Gititu was a tenant on the plot owned by the deceased and her husband. Prosecution proved that the accused had been a tenant on that plot for more than one year. The other tenants described their relationship with the accused as cordial. The one shortcoming those tenants talked about in regard to the accused was the accused's behavior of getting drunk and when he arrived at the plot where they lived in his drunken state, the other tenants stated that he, the accused, threatened to do someone harm. One such time the prosecution witnesses stated that the accused on arriving at the plot after taking alcohol swore to "eat the heart of someone".
2. On May 31, 2018 the accused on his admission stated he had been drinking alcohol with his friends. On reaching home at the plot, accused said he found his neighbors fetching water from a common tap which was situated outside accused's door. There previously had been water shortage. Just before the arrival of the accused to the plot, the landlady (the deceased) informed the tenants that water was available and accordingly told them they could take water from the tap.
3. The accused on finding his neighbor's getting water got his water container and according to his testimony he wanted to jump the queue of those who had arrived at the tap before him. The accused insisted on jumping the queue and whereas the other tenants did not respond to his insistence, the landlady engaged the accused, reprimanding him for his action. The accused called the landlady uncircumcised woman. This angered her and according to some prosecution witnesses, the land lady retaliated by throwing water to the accused. Other witnesses stated that the land lady retaliated by throwing the pail to the accused. All agree that thereafter, the accused got hold of the landlady's neck



and pinned her to the wall. One neighbor intervened and separated them. The accused and the deceased however continued abusing each other as they went to their respective rooms.

4. Very soon after, the neighbors heard the landlady complain, while in her room, that she was unable to breathe. The neighbors went to her aid, some attempted to administer first aid by using onions while others began to look for transport to take the land lady to hospital. Those that observed the landlady noticed she was emitting blood through her mouth.
5. The vehicle that was sought was not available and neighbors agreed to hire boda boda to take the landlady to hospital. Although the accused offered to sit on that boda boda to hold up the landlady all refused to allow him because he was drunk. The accused and other neighbors followed those who took the landlady to the hospital and they all met at the hospital. At the hospital the landlady was pronounced dead on arrival.
6. The body of the deceased on being subjected to postmortem examination, it was found that the cause of death was asphyxia from manual strangulation. Doctor Eunice Mugwere who carried out the post mortem found the tell tail signs of strangulation such as hemorrhage in the mucus and membrane of the eyes and bluish coloration on the hands and nail. These were indicators that deceased had reduced oxygen intake leading to her death.
7. The accused was charged with offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#).
8. Section 203 of the [Penal Code](#) provides three elements necessary to prove a charge of murder. They are:-
  - “The death of deceased and cause of death.
  - That the accused committed the unlawful act which caused that death.
  - That the accused had Malice afore thought.”
9. The first two elements above have been proved and were not denied by the accused. Death and cause of death as discussed above was proven by the prosecution. The accused committed the unlawful act that caused the death of the deceased.
10. Considering the prosecution witnesses’ evidence and the defence offered by the accused, the prosecution did not prove the accused had malice aforethought. Malice aforethought is defined in section 206 of the [Penal Code](#) as:
  - “Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:-
    - a. An intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not,
    - b. Knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
    - c. An intent to commit a felony;



d. An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”

11. It will be recalled that the prosecution’s witnesses confirmed there was altercation between accused and the deceased. That altercation escalated to physical contact when the deceased either splashed water or threw the pail at the accused. Accused reacted by holding deceased by the neck and he pinned her to the wall. They were separated by one neighbor who also testified on behalf of the prosecution. Once they were separated the accused and the deceased retreated to their respective rooms. The deceased soon after was heard to complain she was unable to breath and later succumbed to death through strangulation.
12. It is clear that the accused and deceased had a dispute which escalated. Prior to the subject day the witnesses said there had been no disagreements between accused and deceased.
13. In my view, there was no evidence adduce showing the accused intended to kill the deceased. He held deceased’s neck following the deceased’s act of throwing water or pail at him.
14. I do accordingly find that accused is guilty of manslaughter rather than murder, for his act, though not intended to it caused death of deceased.

### **Disposition**

15. In the end I hereby find Wallace Kaniaru Gititu guilty of manslaughter of Mary Wambui Musaya deceased.
16. I invite the accused to address the court before sentencing, and as I await such submissions, I note accused has been in custody since arrest on June 2018, that is 4 years and 7 months.

***JUDGMENT DATE and DELIVERED AT KIAMBU this 10<sup>th</sup> day of MARCH, 2023.***

**MARY KASANGO**

**JUDGE**

**In the presence of**

**Coram:**

Accused:

Instructed by Mr. Njehu Advocates for Accused:- Present

For the State:- Mr. Gacharia

**Court**

Judgment delivered virtually

**MARY KASANGO**

**JUDGE**

*2| High Court Kiambu Appeal No 32 of 2018*

