



**Republic v Korir (Criminal Case 59 of 2019)
[2024] KEHC 12827 (KLR) (Crim) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12827 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 59 OF 2019
K KIMONDO, J
OCTOBER 24, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

KELVIN KIPROP KORIR ACCUSED

RULING

1. The accused person is charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. The particulars are that on 23rd August 2019 along Racecourse Road within Nairobi County, he murdered David Mwaura Muiruri.
3. He pleaded not guilty. The prosecution closed its case after the testimony of ten witnesses. Four of them appeared before my predecessor, Ogembo J. Following his transfer; and, pursuant to section 200 (3) of the [Criminal Procedure Code](#), the accused elected to proceed from where the matter had reached.
4. Learned Prosecution Counsel lodged submissions dated 18th September 2024. Their pith is that on the totality of the above evidence, the prosecution has established a *prima facie* case against the accused.
5. Learned counsel for the accused also lodged detailed submissions. In his view, the accused was neither placed at the locus in quo nor positively identified as the person who murdered the deceased. Secondly, that an alleged eye witness named Benson never took to the stand. This in turn watered down the identification parade conducted by PW4.
6. In a nutshell, the defence contends that the prosecution has not laid any foundation to require a rebuttal from the accused. Reliance was made on a number of precedents including, [AHM v Republic](#)



[2022] KEHC 12773 (KLR); *Njibia v Republic*, Nakuru Court of Appeal, Criminal Appeal 13 of 1986 [1986] eKLR; and, *Wamunga v Republic* [1989] KLR 424.

7. I have paid heed to the evidence of some of the witnesses. From the evidence of Eunice Njeri (PW3), a girlfriend of the deceased, they were walking down Racecourse Road at night when they were accosted by two men. She saw one of the two attackers, who was dressed in red, raise a knife and stab the deceased on the left side of the body.
8. I have also taken into account the evidence of Berryl Shasha Oduk (PW1) who in cross examination claimed that she saw two men crossing the road towards her; and, that the shorter of the two asked her to drop her bag. She said as follows-

I turned and saw him...when I heard angusha bag I turned and saw him come to me. He was in a red jacket, I could see this well as he was close to me. There was a street light...he had a knife, luminous grey.

9. There is then the evidence of the pathologist (PW6) and a brother of the deceased (PW10). The pathologist concluded that the cause of death was

“exsanguination due to a chest injury from a penetrating sharp trauma”.

10. There is then the contested evidence of Chief Inspector Limo (PW9) and PC Zachary Gitonga (PW5) regarding the CCTV footage (exhibit 6) which they claimed showed the two assailants at the scene.
11. The prosecution’s case is thus largely built around circumstantial evidence. But upon the digest of the evidence of all the ten witnesses; and, cognizant of the precedents in *Bhatt v Republic* [1957] EA 332 and *R v Kipkering arap Koske & another* 16 EACA 135 (1949), I find that the Republic has established a prima facie case calling for a rebuttal from the accused person.
12. Accordingly, under the provisions of section 306 (2) of the *Criminal Procedure Code*, I hereby place the accused person on his defence.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 24TH DAY OF OCTOBER 2024.

KANYI KIMONDO

JUDGE

RULING READ VIRTUALLY ON MICROSOFT TEAMS IN THE PRESENCE OF: -

The accused.

Mr. Kingoina for the accused person instructed by Kingoina-Obuya & Company Advocates.

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

Mr. E. Ombuna, Court Assistant.

