



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Mburu (Criminal Case 5 of 2019)  
[2024] KEHC 12690 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12690 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE 5 OF 2019  
J WAKIAGA, J  
OCTOBER 23, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**EDITH NYAGUTHII MBURU ..... ACCUSED**

**RULING**

1. The accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal code, the particulars of which were that on the 20<sup>th</sup> day of April 2019 at Makongo Village Ngatho Sub-location in Gatanga Sub-County within Muranga County, murdered John Manene Maina.
2. She pleaded not guilty and to prove its case against her, the prosecution called and examined a total of thirteen (13) witnesses and at the close of the prosecution case it was submitted on her behalf that PW1, 2 and 3 in their testimony stated that they did not know who caused the death of the deceased, while PW4 stated that when he saw the fire, he asked the accused about the fire and her answer was that she was burning clothes, so he decided to go back to his house, when he saw the accused dragging something black. It was contended that it was not possible for PW4 to see from his house as there was a fence.
3. It was contended that his evidence was contradicted by that of the Investigating officer PW12 and PW11. This evidence was contested by that of PW9 and PW10, who were children of the accused and the deceased, whose evidence was that it is the deceased who took out the mattress, locked the accused outside the gate before starting the fire and that the accused did not murder the deceased.
4. It was contended that the prosecution did not establish that the accused killed the deceased and that the evidence on record pointed to the fact that the deceased committed suicide. It was submitted that the prosecution failed to prove prima facie case.



5. The prosecution did not make any submission at this stage.

### **Determination**

6. At this stage, all that the prosecution is required to prove is whether there is evidence on record which if the accused decide to remain quiet, the court may still convict on the same, put differently whether there is enough evidence to enable the court to ask the accused to offer some explanation.
7. Justice J.B. Ojwang (as he then was ) in then case of Republic v Stephen Chomba Kamau [2011] eKLR stated that the question at this stage is not whether or not the accused is guilty as charged but whether there is cogent evidence of his connection with the circumstances in which the killing of the deceased occurred and that a detailed analysis of the evidence is not desirable if the court is going to put the accused on his defence as too much details in the trial court's Ruling could then compromise the evidentiary quality of the defence.
8. This dictum is capture in Section 306 of the Criminal Procedure Code which states that when the evidence of the witnesses for the prosecution has been concluded, the court if it considers that there is no evidence that the accused or any one of the several accused persons committed the offence shall after hearing if necessary any arguments which the Advocate for the prosecution or the defence may desire to submit record a finding of not guilty.
9. In this case the incidence took place in the confines of the house shared between the accused and the deceased at night and having looked at the evidence on record and without saying too much thereon, I am satisfied and hold that the prosecution has established prima facie case to enable me put the accused on her defence which I hereby do.
10. The accused is therefore advised of her rights under Article 50 of *the Constitution* and Section 306 of CPC and is therefore called upon on the advice of her Advocate on record to choose how she wishes to defend herself.
11. And it is ordered.

**DATED SIGNED AND DELIVERED AT MURANGA THIS 23<sup>RD</sup> DAY OF OCTOBER 2024.**

**J. WAKIAGA**

**JUDGE**

In the presence of:

Ms Muritu for the accused

Accused – Present

Jackline – Court Assistant

