



**Republic v Mugo (Criminal Case E001 of 2022)  
[2024] KEHC 125 11 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12511 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL CASE E001 OF 2022  
JK SERGON, J  
OCTOBER 17, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**DAVID KAMORE MUGO ..... ACCUSED**

**RULING**

1. David Kamore Mugo the Accused herein was charged with the information of Murder Contrary to Section 203 as read with 204 of the *Penal Code*. The Particulars of the information are that on 19th day of December, 2021 at Nyairobi Village in Liloch Location in Kipkelion Sub - County within Kericho County, the accused person murdered Ruth Wanjiru Kamore.
2. On 28th January, 2022 the accused person took a plea and pleaded not guilty to the charge of murder. The prosecution called six (6) witnesses who testified in support of its case against the accused person before closing its case.
3. Mr. Morata the Learned Counsel representing the accused person made oral submissions on a no case to answer. The Learned Counsel contended that the prosecution failed to establish a prima facie case and that there was insufficient evidence to place the accused on his defence. The Learned Counsel contended that the prosecution failed to establish their case beyond reasonable doubt and that the prosecution's case heavily relied on circumstantial evidence. It is apparent from the evidence tendered that all the prosecution witnesses did not witness the commission of the offence. Learned Counsel for the defence cited the case of *Republic v Johnstone Muluka Mbatia* [2018] eKLR where the court relied on the case of *M'Rukaria v Republic* 2014 eKLR as approved by Cr. Appeal No. 32 of 1990, the court held that;

“...circumstantial evidence must satisfy 3 tests;



- (i) The circumstances from which an inference of guilt is sought to be drawn must be cogent and firmly established.
- (ii) Those circumstances should be of a definite tendency on erringly pointing towards guilt of the accused.
- (iii) The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all humans probably the crime was committed by the accused and none else.” The Learned Counsel was of the submission that there was no nexus between the accused and the deceased’s death.

4. Mr. Musyoki the Learned Senior Assistant Director of Public Prosecution submitted that the prosecution had established a prima facie case against the accused person beyond reasonable doubt and that the prosecution’s case was founded on direct as well as circumstantial evidence. The Learned Prosecutor reiterated that on the material day, the accused fatally stabbed the deceased who succumbed while undergoing treatment and that the deceased was last seen with the accused, in which case there is a duty placed on the accused to give an explanation relating to how the deceased met her death and in the absence of any explanation, this court is justified in drawing the inference that the accused killed the deceased.

5. This court has considered the submissions by defence and prosecution. I find that the prosecution has established a prima facie case against the accused warranting him to be placed on his defence. Pw. 1 testified that on the material day she heard her mother screaming in her bedroom, she went to the bedroom and found her mother holding her stomach, while her father was seated on the bed looking confused. Pw. 2 stated that she heard screams and upon her arrival at the deceased’s homestead she found Pw. 1 and Pw. 3 trying to assist the deceased. Pw. 2 further testified that the deceased was rushed to Fort Tenan Hospital by members of the public, she was subsequently referred to Kericho Teaching and Referral Hospital where she succumbed while undergoing treatment. Pw.5 medical doctor performed a post mortem on the deceased after she had succumbed while undergoing treatment and his findings were that the cause of death was heavy blood loss due to a stab wound. Pw. 6 the investigating officer stated that while conducting investigations, he interrogated family members and recorded the statements which revealed that the deceased was stabbed by the accused.

6. I find that the prosecution witness accounts placed the accused at the scene of crime and revealed that he was the last person last seen with the accused, there is therefore a duty placed on the accused to give an explanation relating to how the deceased met her death and in the absence of any explanation, this court is justified in drawing the inference that the accused killed the deceased.

7. Having considered the material placed before me, I am satisfied that the prosecution has established a prima facie case for the purposes of a finding that the accused person has a case to answer.

8. I accordingly place the accused person on his defence under section 211 of the Criminal Procedure Code Cap 75 Laws of Kenya.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 17TH DAY OF OCTOBER, 2024.**

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**J. K. SERGON**

**JUDGE**

In the presence of:



C/Assistant – Rutoh

Prosecutor - Musyoki

Accused – Present in Person

Morata for the Accused

