



**Republic v Machithi (Criminal Case 27 of 2019)  
[2024] KEHC 14026 (KLR) (12 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14026 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE 27 OF 2019  
J WAKIAGA, J  
NOVEMBER 12, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JAMES MUTUOTA MACHITHI ..... 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 13<sup>th</sup> day of September 2019 at Kigetuni village, Muranga East Sub County within Muranga County, he murdered Morris Machithi Kamanda.
2. He pleaded not guilty to the charges and to prove its case against the same, the prosecution called and examined a total of six witnesses and at the close of which the parties made submissions on the case to answer.
3. On behalf of the State it was submitted that the death of the deceased was proved through the evidence of PW1, PW2 and PW3 all who saw the deceased's body and PW5 the Pathologist who confirmed the fact and the cause of death as an Asphyxia secondary to fatal neck compression.
4. It was submitted that the prosecution case was based on circumstantial evidence that the accused was the only person who used to live with the deceased in the same compound and that there was an existing land dispute between them, thereby providing motive causing a strong link with the accused to the crime as was stated in the case of Ahmed Abolfathi Mohammed & another v R [2018] eKLR.
5. On behalf of the accused it was submitted that the prosecution case was solely based on circumstantial evidence as there was no eye witness to the offence. It was contended that the prosecution case was full of contradictions thereby weakening the chain of circumstances linking the accused to the crime in support of which reliance was placed on the case of Abel Maina Mburu v Republic [2021] [ eKLR



where the court stated that inconsistencies and or contradictions may be ignored if they do not go to root of the prosecution case, otherwise they should be resolved in favour of the accused.

6. It was contended that the prosecution failed to establish the ingredients upon which the court may rely on circumstantial evidence and that the conduct of the accused as per the evidence of PW2, who did not run away from the scene and the fact that no weapon was found on him, shows that he did not commit the offence.

### **Determination**

7. 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.
8. In this case and with the injunction by Justice J.B. Ojwang as he then was in mind, I have looked at the evidence of PW1 and the fact that the accused was the last person seen with the deceased alive and without say much thereon so as not to compromise the defence the accused is likely to offer should he decide to do so, find and hold that the prosecution has established prime facie case to enable the court put the accused on his defence which I hereby do.
9. The accused having been advised of his constitutional right under Article 50, the right to remain silence, is therefore called upon through the advice of his Advocate on record and in exercise of his rights under Section 306 of the Criminal Procedure Code to chose how he intend to defend himself. And it is ordered.

**DATED, SIGNED AND DELIVERED AT MURANGA THIS 12<sup>th</sup> DAY OF NOVEMBER 2024**

**J. WAKIAGA**

**JUDGE**

In the presence of :

Ms. Gakumu for the State

No appearance by Mr. Mbuthia for Accused

Jackline – Court Assistant

