

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL CASE NO. 51 OF 2019**

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL GITHINJI NJERI.....ACCUSED

**JUDGMENT**

1. A minor traffic accident and the ensuing road rage ended in death. A *matatu* and a personal car collided in Zimmerman along Kamiti Road. The smaller car was damaged on its bumper and head lights. According to a witness, the driver was savagely beaten by the crew from the *matatu*. He was rushed to Uhai Neema Hospital at Kasarani where he was pronounced dead.
2. The Republic brought information to the High Court charging the accused with *murder* contrary to section 203 as read with section 204 of the **Penal Code**. The particulars being that on 24<sup>th</sup> December 2017 in Zimmerman Estate within Nairobi County, with others not before the court, he murdered *Joseph Ng'ethe Kiarie* (hereafter, the deceased).
3. He pleaded *not guilty*. The prosecution marshalled

six witnesses. One of them appeared before my predecessor, *Chepkwony J.* On 24<sup>th</sup> November 2022, and, pursuant to section 200 (3) of the **Criminal Procedure Code**, the accused elected to proceed from where the matter had reached.

4. When the accused was placed on his defence, he gave sworn testimony. He raised an *alibi* distancing himself from the scene of the crime at Tanners Stage on Kamiti Road; and, claiming that he only linked up with the matatu crew far away at Roysambu, Kasarani along the Thika Super Highway.
5. I will now appraise the evidence. PW1 was *Peter Kamanda Kiarie*, an elder brother of the deceased. He received a call from another sibling informing him that the deceased was injured and taken to Uhai Neema Hospital. When he got there, he was informed of the death and that the body had been removed to the funeral home at Kenyatta University.
6. On 27<sup>th</sup> December 2017, he identified the body for post mortem purposes. He was accompanied by his sister, *Pauline Wanjiru Kiarie* and a police officer.
7. PW2 was *Bernard Mwanzia Mbwele*. He was the owner of the Isuzu Mini-Bus registration number KCF 793Z. He said it was

plying the Thika Road and Kamiti Road under *Mariba Investment Sacco*. He stated that on the date of the accident, its driver was *Peter Kamiru Maina* while the conductor was the accused.

8. However, the witness was away in Mombasa and got to learn of the incident from *Kenneth Mburu* (another driver) who told him that *Peter Maina Kamiru* had “killed someone”. PW2 called his driver, *Peter Kamiru*, who informed him that at Tanners stage, a private car hit the bus leading to an argument; and, that the other driver was assaulted. PW2 said that the accused gave him the same story.
9. He advised them to report the matter to the Police. On 25<sup>th</sup> December 2017, PW2 returned to Nairobi and made a report at Kasarani Police Station. Under cross examination, he conceded that the driver did not mention the accused and that the accused’s cellphone kept going on and off.
10. *Kipkosgei Kimutai* (PW3) was employed at the material time as a driver at Kamiti Prison. On 24<sup>th</sup> December 2017 at about 14:00 hours, he was driving an ambulance GKA 339U along Kamiti Road. At the edge of Zimmerman, he found the road

blocked by the public using stones and tyres. There was a small saloon car registration number KBA 261 W on the side on the left as one headed towards Kasarani. It was behind the *matatu*.

11. He was requested by the public to assist the driver. The deceased was evacuated from the driver's side and transferred into the ambulance. PW3 and three people took the injured man to Uhai Neema Hospital. The patient was received at the emergency section but the doctor returned shortly afterwards and informed them that he was dead. PW3 made a report at Kasarani Police Station.

12. According to *Edward Mburugu Gichuhi* (PW4), he was driving another *matatu* Registration No. KAS 899E towards Zimmerman. At Tanners stage, he witnessed an accident involving a *matatu* emblazoned *Mariba Investment* and a personal car. The personal car had damage on its bumper and head lights. The *matatu* had a small dent at the back bumper.

13. He said the driver of the salon car was being "*beaten by the matatu operators - around 4 men*". He added as follows-

*I knew some of them. Some had driver's and tout's uniform. I came out and tried to intervene. The matatu operators turned against me and started beating me. I fell into a ditch, they stomped on me, then got into their vehicle and left. One had driver's uniform, the other tout's uniform. The driver had a beard and was wearing blue uniform.*

14. In cross examination, he stated that the accused was one of the assailants and that when he tried to intervene, the group “stomped on [him] when [he] fell into the ditch”. He and three other people helped to put the deceased into the ambulance for treatment at Uhai Neema Hospital. PW4 received first aid there and further treatment at Guru Nanak Hospital.
15. In further answer, he said that he got to the scene when the fight was still going on, and that the four persons beating the deceased were the same ones who attacked him. He said the accused was one of assailants and hit him on the chest before he fell into the ditch.
16. PW5 was *Paul Njihia*, the Assistant Director Forensics at IPOA. At the material time he was based at Kasarani Police Station and a gazetted scene of crimes officer. On 26<sup>th</sup> December 20217, he and other police officers visited the scene. He took

various photos at the scene, another set of the deceased at Kenyatta University Funeral Home as well as the two vehicles involved (exhibit 2 (i) to (xxiv)). He also produced the certificate required by the **Evidence Act** dated 28<sup>th</sup> July (exhibit 2).

17. In cross examination, he said he used the markers in the photos to reconstruct the scene. The photographs of the deceased were taken a day after the death. In further answer, he said he had testified before in a different trial involving the deceased in HCCRC No. 6 of 2018 where there two accused persons had earlier been charged. He said that the exhibits were the same.

18. *SSGT Charles Musyimi* (PW6) was the investigation officer. After he received the report from PW4, he visited Neema Uhai Hospital. The body had an injury (bump) at the back of the head. He then went to *Marimba Sacco* in Zimmerman and confirmed that the *matatu* was owned by PW2. PW6 said the *matatu* was abandoned at Kariokor. He produced the accused's passport photo, police clearance certificate and a copy of the ID retrieved from the Sacco (exhibits 3 (i) to (iii)).

19. The witness said that the police had earlier arrested two suspects but they were acquitted of the murder in HCCR No. 6 of 2018. On 7<sup>th</sup> August 2019, and through mobile tracking, he arrested the accused who was working as a conductor in another *matatu* plying route 44 and which he intercepted at Thika Road Mall. However, the other suspect, *Peter Maina*, remains at large.
20. In cross examination, he denied telling the court in HCCRC No. 6 of 2018 that there was mob justice. He also clarified that *C.I Munyoki* had conducted an ID parade in that other case. He said he got the accused's mobile number from the *matatu* owner but it was switched off. He claimed that that the accused went underground. The police subsequently published a newspaper advert showing the accused was wanted. Those details are however missing in the investigation diary.
21. On 3<sup>rd</sup> October 2024, the postmortem report made by *Dr. Johansen Oduor* was admitted into evidence *by consent* and without calling the maker (exhibit 6). According to the pathologist, the cause of death was "*head injury due to blunt trauma*".

22. Like I stated, when the accused was placed on his defence, he denied that he assaulted or killed the deceased. He also stated that when the fracas at Tanners stage took place, he was waiting for the *matatu* at Roysambu. He said as follows-

*I did not do it. On 24/12/2017, a Sunday, I was with my family at home. The previous Saturday, my manager Bernard, had asked us to take the motor vehicle for check-up. I was a conductor.*

*At 11.00 a.m., the driver, Peter Karimu, called me on that Sunday. I called Ojijo and Yano who are "Kamagera," touts. They said they were at Roysambu. I told them to meet us at Githurai stage at 12.00pm to link up with Peter.*

*I went to Roysambu at 12.45 - 1.00pm, picked miraa and waited at the stage. The matatu took longer than expected. I called Peter, but he did not answer. Then I saw the motor vehicle but it had no passengers except the Kamageras. The driver was with the mechanic. The mechanic told me that at Tanners area, they were involved in an accident with a private car which had led into a fracas.*

23. Learned counsel, Mr. Omenke and Mr. Njogu relied on the submissions dated 24<sup>th</sup> July 2025. In a synopsis, they contend that the evidence does not connect the accused with the

homicide and falls far short of the threshold of proof; and, that in view of the *alibi*, his identification remains in doubt.

24. The evidence was also attacked on two other fronts: That it was circumstantial; and, that there was great danger in relying on identification by a single witness. I was referred to ***Vincent Manyonge v Republic*** [2018] KEHC 164 (KLR), ***Bukenya & 2 Others v Republic*** (1973) EACA 549 and ***Bosco Ndungu Kinyanjui v Republic*** [2015] KECA 189 (KLR) among others.
25. My findings are as follows. The burden of proof that the accused murdered the deceased lay squarely with the Republic. ***Woolmington v DPP*** [1935] AC 462, ***Bhatt v Republic*** [1957] E.A. 332.
26. Section 203 of the **Penal Code** provides that *any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.*
27. There are three key ingredients that *must* be present: first, the prosecution must prove beyond reasonable doubt the *death* of the deceased and the *cause* of that death; secondly, that the accused *committed* the unlawful act that led to the death; and, thirdly, that the accused was *of malice aforethought*.

28. The death of the deceased is *no* longer in doubt. His elder brother, (PW1) identified the body for postmortem purposes at Kenyatta University Hospital Mortuary on 27<sup>th</sup> December 2017.
29. The cause of death has also been established. From the postmortem report made by *Dr. Johansen Oduor* (exhibit 6), death resulted from "*head injury due to blunt trauma*".
30. I thus readily find that the death was *unlawful*. The next question then is whether the Republic proved beyond reasonable doubt that the accused, *of malice aforethought*, killed the deceased.
31. The eye-witness in this case was PW4. He was driving another *matatu*. When he got to the scene, he saw four men from the *matatu* attacking the deceased. He knew some of the attackers. Some had *matatu* driver's and tout's uniforms. When he tried to intervene, the matatu operators turned against him and started beating him and he fell into a ditch. They then stomped on him, got into the matatu and sped off.
32. When cross examined, he was emphatic that the four persons who assaulted the deceased were the same ones who attacked him and that the accused was one of them and hit

him on the chest before he fell into the ditch. PW4 is one of the people who helped to evacuate the deceased from his vehicle into the ambulance driven by PW3 to Neema Uhai Hospital. I have no cause to doubt that he was injured and sought first aid there and further treatment at Guru Nanak Hospital.

33. The *identification* of the accused by PW4 is also *reinforced* by other evidence. Firstly, his employer PW2 who confirmed that on the date of the accident, the driver of the *matatu* was *Peter Kamiru Maina* while the conductor was the accused. Furthermore, that fact was admitted by the accused in his defence when he stated-

*On Saturday, my manager Bernard [PW2], had asked us to take the motor vehicle for check-up. I was a conductor. At 11.00 a.m. [on 24<sup>th</sup> December 2017], the driver, Peter Karimu, called me on that Sunday. I called Ojjo and Yano who are "Kamagera," touts. They said they were at Roysambu. I told them to meet us at Githurai stage at 12.00 p.m. to link up with Peter.*

34. The accused testified that he was *not* at Tanners stage when the deceased was attacked but was chewing miraa at Roysambu stage between 12.45 and 1.00 p.m. when the *matatu* arrived. He said he was surprised as it had no

passengers except the *Kamageras*.

35. This *alibi* was raised well after the close of the prosecution's case. But it did *not* shift the burden of proof to the accused. See ***Republic v Johnson*** [1961] 3 ALL E.R. 969, ***Saidi Mwakawanga v Republic*** [1963] E.A. 6. Like I stated earlier, the legal burden of proof lay throughout with the prosecution. ***Woolmington v DPP*** [supra] ***Bhatt v Republic*** [supra].

36. I have thus *weighed* the *alibi* against the evidence of PW4. PW4 was attacked by the accused at the scene. He was also emphatic that the four persons who attacked him and who included the accused were the same persons who assaulted the deceased. The attack took place in broad daylight. I readily find that the accused was lying that he was miles away at another location in Roysambu chewing miraa. The entire *alibi* is a sham.

37. I have reached the conclusion that the accused was *positively identified* as one of the attackers by PW4. I have warned myself about the dangers. But like I stated, the evidence of PW4 is reinforced by other important aspects: Firstly, the accused's employer (PW2) confirmed that on the

date of the accident, the driver of the *matatu* was *Peter Kamiru Maina* while the conductor was the accused.

38. Secondly, the attack was carried out on a public road in broad daylight. Thirdly, the witness was himself a *matatu* driver and knew some of the attackers. Fundamentally, he had operated on the same route for *over one year*. Fourthly, the accused hit PW4 on the chest. He and three of the assailants stomped on him when he fell into the ditch before they took off in the *matatu*.

39. Fifthly, the witness was emphatic that the persons who assaulted him were the same ones who attacked the deceased. Sixth, PW4, was one of the people who helped to evacuate the deceased from his vehicle into the ambulance driven by PW3 to Neema Uhai Hospital.

40. The guilt of the accused is further reinforced by his conduct. His employer (PW2) said that the accused's cellphone kept going on and off. According to PW6, the line was switched off and he went underground. The accused and the driver abandoned the *matatu* at Kariokor. The police had to advertise

that he was a wanted person. He was only arrested with the aid of mobile tracking over one and a half years later on 7<sup>th</sup> August 2019.

41. Regarding the important ingredient of *mens rea*, the accused was one of four men who assaulted the deceased. By roughing up the deceased in that manner and drumming him in the head, he and his accomplices *knew or ought to have known* that it was likely to cause grievous harm or death. I thus find that the accused had *malice aforethought* as defined in section 206 (b) of the **Penal Code**.

42. The conduct of the accused is *inconsistent* with his plea of innocence. There is no evidence that the deceased attacked him or that he was acting in self-defence. The deceased died as a *consequence* of that conduct. The entire corpus of direct, circumstantial and documentary evidence points *irresistibly* to his guilt.

43. The upshot is that the prosecution has proved the charge *beyond reasonable doubt*. The accused, *of malice aforethought*, caused the death of the deceased by an *unlawful* act. I

accordingly enter a finding of *guilty* and *convict* him of *murder* contrary to section 203 as read with section 204 of the **Penal Code**.

It is so ordered.

**DATED, SIGNED** and **DELIVERED** at **NAIROBI** this 30<sup>th</sup> day of September 2025.

**KANYI KIMONDO**  
**JUDGE**

**Judgment read virtually on Microsoft Teams in the presence of-**  
Accused.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Omenke & Mr. Kibui for the accused instructed by Omenke Adeje & Company Advocates.

Mr. E. Ombuna, Court Assistant.