



**Republic v Gichohi & another (Criminal Case E017 of 2024)
[2025] KEHC 14448 (KLR) (Crim) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14448 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL CASE E017 OF 2024
KW KIARIE, J
OCTOBER 15, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

DAVID KARIUKI GICHOHI 1ST ACCUSED

MARGARET NYAMBURA NTHIWA 2ND ACCUSED

RULING

1. David Kariuki Gichohi and Margaret Nyambura Nthiwa are charged with murder contrary to section 203, as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the night of the 13th & 14th day of October 2024, at Jericho trading centre, in Nyandarua Central Sub-County within Nyandarua County, they murdered David Njuguna Maina.
3. The deceased was drinking with friends and other patrons at Turkana Bar. His body was recovered on the 14th day of October 2024. It was outside the fence of the said bar and had multiple injuries.
4. From the post mortem produced by Dr Lucy Nyanchama Nyachae (PW8). It was clear that another person or persons inflicted the injuries.
5. None of the witnesses called during the trial observed the incident that resulted in the death of the deceased, whom they knew as Museya. The first accused was the watchman at the premises, while the second accused was the barmaid. This was the sole evidence connecting the two accused to the offence.



It was circumstantial evidence. In the case of Mohamed & 3 Others vs Republic [2005]1KLR 722, Osiemo, Judge, restated what circumstantial evidence is, as follows:

Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis but the one proposed to be proved.

6. Earlier, in the case of Republic vs Kipkering arap Koskei & Another 16 EACA 135, the Court of Appeal held:

In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

7. The prosecution failed to produce any evidence linking the accused persons to the offence. As a result, the accused persons were charged based on suspicion. The Court of Appeal in the case of Sawe v Republic [2003] KLR 354 held as follows:

Suspicion, however strong, cannot provide the basis of inferring guilt, which must be proved by evidence beyond a reasonable doubt.

8. After considering the evidence on record, the question is whether the prosecution has established a prima facie case against the accused. In Black's Law Dictionary, 10th Edition, a prima facie case is defined as follows:

Prima facie case. (1805) I. The establishment of a legally required rebuttable presumption.
2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favour.

9. The Court of Appeal in the case of Ramanlal Trambaklal Bhatt vs R [1957] E. A 332 at 334 and 335 defined a prima facie case as follows:

It may not be easy to define what is meant by a "prima facie case", but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defence.

10. Article 50 (2) (i) of the *Constitution* of Kenya provides:

(2) Every accused person has the right to a fair trial, which includes the right—

(i) to remain silent, and not to testify during the proceedings;

11. In this case, if the accused persons choose to exercise their constitutional rights, as previously mentioned, I cannot convict any of them based on the current evidence. Therefore, the prosecution has not established a prima facie case against them. I hereby acquit each of them of the charge of murder under section 306(1) of the Criminal Procedure Code. Each is entitled to liberty unless they are lawfully detained for another reason.

DELIVERED AND SIGNED AT NYANDARUA, THIS 15TH DAY OF OCTOBER 2025

KIARIE WAWERU KIARIE

JUDGE

