



REPUBLIC OF KENYA



**Republic v Gikonyo & another (Criminal Case 55 of 2019)
[2025] KEHC 14433 (KLR) (Crim) (14 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14433 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 55 OF 2019
K KIMONDO, J
OCTOBER 14, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ALEX MACAU GIKONYO 1ST ACCUSED

NAFTALLY KALAMA FONDO 2ND ACCUSED

RULING

1. The accused are charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. The Director of Public Prosecutions informs the High Court that on the 2nd August 2019, at about 1100 hours at Kastemill School along Nairobi Thika Super Highway within Nairobi County, they jointly murdered Gerald Kimondo Wachira (hereafter the deceased)
3. They pleaded not guilty. The prosecution marshalled ten witnesses. Eight of them appeared before my predecessor, Ogembo J. On 16th October 2023, and, pursuant to section 200 (3) of the [Criminal Procedure Code](#), the accused elected to proceed from where the matter had reached.
4. I am now called upon to determine whether that corpus of evidence is sufficient to place the accused on their defence.
5. The Republic lodged submissions dated 22nd August 2025. Those by the 1st accused are dated 29th September 2025 while those by the 2nd accused are dated 28th August 2025.
6. According to the learned counsel for the Republic, Ms. Kigira, there is sufficient direct and documentary evidence linking both accused to the homicide. She submitted that the deceased's



conduct did not amount to provocation. Reference was made to section 208 of the Penal Code. Counsel also cited a number of precedents including Bhatt v Republic [1957] EA. 332 and Republic v Godfrey Ngotho Mutiso [2008].

7. But according to learned counsel for the 1st accused, Ms Wangechi and Ms. Muritu for the 2nd accused, the witnesses gave contradictory and sketchy evidence that does not tie the accused to the homicide. Furthermore, there was no proof of the key element of malice aforethought.
8. Learned counsel for the 2nd accused added that since the incident occurred on a busy highway, it was unreasonable to expect the accused to stop the bus. In a synopsis, the defence contended that the prosecution failed to lay any firm foundation to require a rebuttal from any of the accused.
9. My finding is as follows. It bears repeating that the accused are still deemed innocent at this stage. Furthermore, the inquiry at this juncture is merely to establish if a *prima facie case* has been made out requiring a rebuttal from the any of them.
10. I have paid heed to the evidence of some of the key witnesses. The accused were the driver and conductor respectively of a Zam Zam 45 Ltd matatu bus registration number KCC 021A. The prosecution's case is that the 1st accused threw out the deceased from the moving vehicle and was crushed by it. It is also alleged that the 2nd accused failed to stop the vehicle to allow the deceased to safely alight.
11. It is too early to analyze all the evidence. But I have given heed to the testimony of key witnesses. For instance, George Njoroge Kamau (PW6) was a manager for the bus company. On 2nd August 2019 at about 05:30 hours, he released the above motor vehicle to the 1st and 2nd accused.
12. Kelvin Changenda Mudegu (PW1) was working at a nearby farm in Kasarani. At about 11:00 hours, he heard screams from afar. He testified as follows-

“I stood to watch. The screams were from inside the bus. When the bus came closer to our farm next to the flyover, the screams intensified. The bus stopped. I went closer to the road. More noises came from the vehicle. The vehicle stood at the highway. The doors of the bus were open. Then I saw the conductor push out the man who had been with him at the door. The man had been in the bus. I only saw when he was pushed out. When the man was pushed out, the body of the vehicle hit him and he fell down. The man was pushed from the bus when the bus was still in motion. When he fell down, the rear left tyres ran over his head and hand.”
13. According to Anthony Muigai (PW2), there was an argument between the conductor and the deceased over the fare. He testified that the 2nd accused failed to heed the request by the deceased to stop. When cross-examined by Ms Muritu, he stated-

“The conductor came and sat as they went on arguing. The driver was slowing down and moving on at the same time like he was unsure of what to do. The driver did not stop. He asked who between the 2 and the noises he could follows. Drivers ordinarily stop when told to. This confirms that he was able to listen to the pleas to stop”
14. The death of the deceased is not under contest. According to Corporal Naomi Rop (PW8) at about 12:20 hours, she visited the scene with other police officers. The bus was on the first lane heading towards the city center. They also saw the body behind the rear left wheel.



15. The death was equally confirmed by James Wachira Mwangi (PW5) a father of the deceased who identified the remains on 6th August 2019 for postmortem purposes. According to the post mortem form (exhibit 7) produced by Dr Evelyne Chege (PW9) the death was caused by “complications of multiple organs including arch of aorta laceration and head injury due to blunt force trauma”.
16. Upon the digest of that evidence; and, well guided by the precedents in *Bhatt v Republic* [1957] EA. 332 and *R v Kipkering arap Koske & another* 16 EACA 135 (1949), I find that the Republic has established a *prima facie case* calling for a rebuttal from both accused persons.
17. Accordingly, under the provisions of section 306 (2) of the [Criminal Procedure Code](#), I hereby place the 1st and 2nd accused on their defence.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF OCTOBER, 2025.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of: -

The accused.

Ms. Kigira for the Republic instructed by the office of the Director of Public prosecutions.

Ms. Wangechi for the 1st Accused instructed by Wangechi Gathua Law.

Ms. Muritu for the 2nd Accused instructed by Mumbi Muritu Advocates.

Mr. E. Ombuna, Court Assistant.

