



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYANDARUA**  
**CRIMINAL CASE NO. 51 OF 2023**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**JULIUS NGOMO MUTUA.....1<sup>ST</sup> ACCUSED**

**JULIET MUKAMI MWANGI.....2<sup>ND</sup> ACCUSED**

**RULING**

1. Julius Ngomo Mutua and Juliet Mukami Mwangi are charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that between the 2<sup>nd</sup> and the 4<sup>th</sup> day of August 2023, at Sasumua dam, Njabini location, South Kinangop sub-county within Nyandarua County, they jointly murdered Peter Thuo Maina.
3. Julius Ngomo Mutua (accused1) is the husband of Juliet Mukami Mwangi, his co-accused. He was linked to the offence by a phone call he made to the deceased on 2nd August 2023, while at Maragua around 5 p.m. The evidence of Samuel Kiraguri Mwangi (PW5) showed that the deceased received several calls on his phone at about 5 p.m. while they were at a funeral. This took place at a location called Mumui. He became concerned about why he was receiving many calls, but the deceased did not disclose anything.
4. Making a phone call to someone who is subsequently killed does not make one the killer, unless there is evidence to support that. In the case at hand, the evidence against the 1st accused is mere suspicion.
5. Jane Wangeci Kanyara (PW1) testified that the second accused was brought up in a children's home at Engineer, where the deceased was in charge. She stated that, in a year she

cannot recall, the second accused complained to her that the deceased had raped her. During cross-examination, she said that the second accused gave birth to a child while at the children's home. She informed her that Sammy, the grandson of the deceased, was the father of the child. This, I believe, was meant by the prosecution to infer motive. Without any other evidence to connect her to the offence, this amounts to suspicion.

6. The suspicion that led the accused persons to be connected to the offence was not buttressed with any material evidence. The Court of Appeal in the case of **Sawe vs. Republic [2003] KLR 354**, the Court of Appeal held as follows:

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

7. When can the prosecution be said to have established a *prima facie* case? In **Black's Law Dictionary, 10th Edition**, a *prima facie* case is defined as follows:

***Prima facie case. (1805) 1. 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 favor.***

8. The Court of Appeal in the case of **Ramanlal Trambaklal Bhatt v. 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.***

9. 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;***

In the instant case, if the accused persons opt to exercise their constitutional right as stated above, I cannot convict any of them based on the evidence on record. This, therefore, means that the prosecution has not established a *prima facie* case against them. I accordingly acquit

each one of them of the offence of murder under section 306 (1) of the Criminal Procedure Code. Each is set at liberty unless otherwise lawfully held.

**Delivered and signed at Nyandarua, this 14<sup>th</sup> day of October, 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**