



**Republic v Mugaa & another (Criminal Case 63 of 2017)
[2025] KEHC 14813 (KLR) (14 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14813 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 63 OF 2017
SM GITHINJI, J
OCTOBER 14, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

ENOCK MUGAA 1ST ACCUSED

NICKSON MWIRIGI 2ND ACCUSED

RULING

1. ENOCK MUGAA and NICKSON MWIRIGI are charged with the offence of Murder. Contrary to Section 203 as read with Section 204 of the Penal Code Cap. 63 Laws of Kenya.
2. The particulars of the offence are that on 20th day of August, 2017 at Ndunyuruma Village, Mugae Sub-Location, Rware Location, Buuri Sub-County within Meru County, the accused persons jointly with another not before court murdered Stanley Kabichia.
3. The Prosecution case is that on 20th August, 2017 at about 7:30pm, PW-4 who is a brother to the deceased was at home in Mugae Ruiru Rwarera. His brother Stanley Kabichia requested him to take care of his goats as he went to the market. He went to the market and upon his return asked PW-4 where the goats were. He was shown and drove them home.
4. Later, PW-4 heard gunshots outside his house door. He was asked whether his brother Stanley Kabichia was around. He was orders to get out of the house. When he got outside he saw the assailants who were armed with a gun, Pangas and sticks. They went to his brother’s house and ordered him to open. They however did not wait for him to open as they broke his door. Two of the assailants went into the house and took from therein his brother’s phone, two trousers, a radio, and his wallet which had 2,000/= . They then ordered PW-4 and his brother to move on. One of them took leaves and cleared their footmarks. PW-4 asked them where they were going and he was released to go back. He then asked



them where they were taking his brother and they told him to their home for a discussion. PW-4 then left them and went back to his home.

5. On 21/8 /2017 PW-2 went to graze animals in the morning. He found Stanley Kabichia in the fields weak and unable to talk. He told him in low tone that he had been beaten, and urged him to call his wife. He went to the victim's home but did not find the wife. He went to the scene with the victim daughters who were at home. He as well called neighbours and PW-4.
6. PW-4 went to the scene. He met his brother who said he was beaten by Kaai, Kirimi, Mugaa and Mwirigi. The victim requested he be covered with a blanket as he was feeling cold.
7. PW-4 called for a Motorcycle to rush him to hospital but he could not manage to sit on a Motorcycle. PW-4 went to Subuiga Police Staion and reported the case. Before he made the report, he was called and told his brother had passed on. When he went back he found that the police had picked the body.
8. PW-5 investigated the case. He visited the scene and at the homestead of the deceased and PW-4, recovered a spent cartridge of 7.62 mm. They picked the body and took it to Meru Level 5 Hospital Mortuary.
9. Later in the evening, with help of officers from Mugae AP post, they managed to arrest one suspect, Enock Mugaa who was a National Police Reservist and had been issued with a G3 Rifle. The Rifle was recovered and he was taken to Subuiga Police Station.
10. Kimathi Kairania was called and asked to avail other suspects. On 22/8/2017 he availed Dougls Kirimi and Nickson Mwirigi. The two were also arrested. The three were then charged.
11. The postmortem was conducted on the body of deceased by Dr. Koro at Meru Teaching and Referral Hospital. The doctor found that the body had water in the nose and mouth. Several places had lacerations and bruises on the frontal area of scalp. Both hands had defensive wounds, with lacerations on the back upper and lower part. There was dissection of the left shoulder and the head had soft tissue injuries on the frontal area. Below the scalp, there was blood. There were no fractures on the head. The brain had no problem and there were no injuries inside the head. The rest of the body also had no injuries.
12. The doctor was of the opinion that the injuries were not sufficient to explain the death of the deceased. The doctor then took samples from the stomach, blood, urine, kidney and liver. He then awaited a toxicology report to establish the cause of death. He signed a Death Certificate No. 1128807 and the post Mortem Report dated 28/8/2017. The toxicology report was never availed and the cause of death established. The prosecution closed their case.
13. Section 210 of the Criminal Procedure Code (CPC) provides;-

“if at the close of the evidence in support of the charge, and after hearing such summing up, submissions or argument as the prosecution and the accused person or his advocate may wish to put forward, it appears to the court that a case is not made out against the accuse sufficiently to require him make a defence, The court shall dismiss the case and shall forthwith acquit him.”
14. Therefore, this court must first determine whether a prima facie case has been established before calling on the accused persons to defend themselves.



15. In the case of Remanlal T. Bhatt -vs- R [1957] EA 332, The court of appeal held that:-
- “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 itself on the law and the evidence, could convict if no explanation is offered by the defence”
16. Section 203 of the Penal Code, which provides for the offence of murder states:-
- “Any person who of malice aforethought causes death of another person by unlawful act or omission is guilty of murder.”
17. To prove murder as an offence, the prosecution must establish three key elements:-
1. The fact of death of the victim.
 2. The cause of death (usually by medical evidence or postmortem; and
 3. That the accused caused the death with malice aforethought.
18. In this case. The postmortem did not establish the cause of death; and further tests, which were to be carried out in an effort to establish the same, were not done. Where the cause of death is unknown, the court can hardly find the accused guilty of Murder, unless there is other reliable strong circumstantial evidence establishing beyond reasonable doubt that they caused his death or the cause of the death is obvious, like in a case where the head is severed.
19. In Ndungu -vs- Republic [1985] KLR 487, the Court of Appeal held:-
- “Where the cause of death is not established by medical evidence, a conviction cannot properly be entered for the offence of murder unless there is other evidence showing beyond reasonable doubt that death resulted from an unlawful act or omission by the accused.”
20. In this case, there is no cogent evidence proving that the accused caused the death of the victim. As such, the evidence on record falls short of establishing a prime facie case against the accused person and they are therefore found to have no case to answer, and are accordingly acquitted of the offence under Section 210 of the C.P.C.

DATED AND DELIVERED AT MERU THIS 14TH OCTOBER, 2025

S. M. GITHINJI

JUDGE

Court: Surety is discharged.

