



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
HC. CRIMINAL CASE NO. 3 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

GRACE NJERI GICHIRA.....1ST ACCUSED

DENNIS IRUNGU WAWERU.....2ND ACCUSED

ROBERT NYAGA JOSEPH.....3RD ACCUSED

RULING ON CASE TO ANSWER

1. The 2nd accused and 3rd accused person were initially charged together with 1st accused by Information dated 26/9/2026 for the offence of to murder contrary section 203 as read with 204 of the Penal Code with particulars that on the night of 6th and 7th February 2016 together with others not before the Court at Mburi village, Rwambiti sub-location, Baragwi location in Kirinyaga County the accused unlawfully murdered PHARIS MUTHIKE NJUKI.
2. Upon a plea bargain, the 1st accused, wife of the deceased pleaded guilty and was convicted the Court (Mwongo, J.) for the offence of Manslaughter contrary to section 202 as read with 205 of the Penal Code and placed her non-custodial sentence for (3) years on 30/5/2023.
3. The trial proceeded for the 2nd and 3rd accused and (8) witnesses were called to prove this charge.
4. The Court has considered the evidence before the Court in terms of section 306 of the Criminal Procedure Code alongside submissions on case to answer filed by the Counsel for the parties – Mr. Mamba for DFPP; Mrs. Makworo for the 2nd accused and Mr. Ndana for the 3rd Accused.

5. The prosecutor's case is that the death of the deceased husband of the 1st accused arose in the circumstances of marital disagreement where following a quarrel over school fees for their last born daughter the deceased had contracted the 3rd Accused to kill the 1st accused but upon informing the 1st accused of his mission, the 1st accused had agreed to top up the fee that the deceased had paid so that the 3rd person would turn the gun on his contracting party. Upon killing the deceased, the 3rd Accused informed the 1st accused that he had finished the job and she called the 2nd Accused to help in removing the blood soaked mattress from the room and clean the bedroom, for which he was paid.
6. The prosecution story could only have been based upon alleged confessions as testified by the Investigating Officer PW7 who said that:

“...Grace Njeri the deceased's wife was temporarily removed from the cell and we interrogated her in connection with the things recovered at the scene. She then confessed what had happened about the incident. On her confession she mentioned that one Nyaga was involved. She also confessed that the mattress was disposed off by their shamba boy Dennis Irungu. We thereafter arrested Dennis as a suspect. He confessed that he chopped off the Mattress.”

7. The alleged confessions by the deceased's wife (the 1st Accused) and the 2nd Accused were not presented before the Court in terms of section 25A of the Evidence Act.
8. In these circumstances, it was crucial for the prosecution to produce the alleged confessions by the 1st and 2nd accused if they had been taken in accordance with section 25A of the Evidence Act. Otherwise, the alleged admission of the offence by the 1st accused implicating the 2nd and 3rd accused and the 2nd accused's admission of the offence (even though it will appear only to amount to accessory after the fact) cannot be relied upon by the court to convict for murder. Section 222 of the Penal Code provides for the offence of accessory after the fact of murder as follows:

“222. Accessory after the fact to murder

Any person who becomes an accessory after the fact to murder is guilty of a felony and is liable to imprisonment for life.”

9. If the alleged confessions were only made to the Investigating Officer, they would be inadmissible as confessions under section 25A (1) of the Evidence Act, which provides as follows:

*“A **confession or any admission** of a fact tending to the proof of guilt made by an accused person is not admissible and shall not be proved as against such person unless it is made in court before a judge, a magistrate or before a police officer (**other than the investigating officer**), being an officer not below the rank of Inspector of Police, and a third party of the person’s choice.”*

10. If taken as **an admission**, the “confession” by the 2nd accused, the Court would require additional evidence to convict. See Supreme Court decision in **Republic v Mohammed & another** [2019] KESC 48 (KLR) that:

*“Where there was a confession an accused person would acknowledge the commission of an offence and could be convicted on the basis of that acknowledgement alone but in the case of **an admission the accused person would acknowledge a fact from which guilt could be inferred but additional evidence would be needed to prove the commission of an offence.**”*

11. The medical examination evidence of DNA analysis on the items recovered from the scene only produced DNA of the deceased and none of the two accused persons now before the Court.
12. The evidence of the Prosecution, even if taken wholesale as submitted by the DPP’s Submissions of 10/6/2025, does not establish the accused’s commission of the offence of **murder** contrary to section 203 as read with 204 of the Penal Code.
13. It is also noted that the facts admitted by the 1st Accused in her Plea Bargain Agreement dated 6/3/2023 did not implicate the 2nd and 3rd accused.
14. The evidence of the witnesses as summarised by the DPP in the Submissions of 10/6/2025 is as follows:-

“On the 7th February 2016, a report of murder was made to Kirinyaga East Police Station that Pharis Muthike Njuki a male adult

aged 45 years had been murdered and dumped in a maize plantation and the investigations led to arrest of 1st, 2nd and 3rd Accused persons.

Pw- 1 {Dr. Joseph Thuo} confirmed that the three were fit to plea.

PW-2 {Carolyn Wawira} she confirmed the deceased was indeed her father and that the axe with blood stain was theirs, [see page 19 of the typed proceedings paragraph 3]

"The 1st accused in the dock is my mother. The statement I recorded I said the axe was ours. The socks were shown to me but I could not say it belonged to my father"

She confirmed the axe was theirs during cross examination [see page 20 para 4]

"I was shown an axe, I know what an axe is. I told them it was the same as the one we had at home."

PW-3 [Henry Kiptoo SangJ was the Government analyst who confirmed that indeed the blood stains found on the items from the deceased house were indeed of the deceased {Pharis Muthike Njuki}

PW-4 {Dr. Karmo} who performed the post mortem formed the opinion that the cause of death was due to "Cardiorespiratory arrest secondary to massive internal and external bleeding after an assault by a heavy blunt object."

Pw-5 {Patrick Ngari Kamau} } testified that on 7th February 2016 at around 6 am he woke up and went to a hotel within Mburi where he usually buys milk.

On his way back from the hotel he saw a trouser on the ground and it had blood stain on one of the pockets, At a close look he saw a dead body of a male person within the shamba and that he was totally naked

and he did not recognize the body on the first sight but later come to realize the deceased was Muthike. It was his evidence that he followed the blood drops that led him to where the trouser was then to the deceased shamba up to the deceased compound where people were shouting with rage.

Pw- 6 {Gibson Mwangi Wotuku} testified that he visited the scene as the chief of [Baragwe] Location, He was introduced to the deceased wife {Grace Njeri Gichira} who confirmed the body was of her husband {Pharis Muthike Njuki}. He further stated that she led them home where they found two fires burning outside the compound on the back door on the gate B if the Compound.

Chief Inspector BIDAN MUTHOMI visited the scene and found and confirmed the deceased was killed elsewhere and the body dumped in a maize plantation. That he visited the deceased house where he was met with a big crowd who wanted to set the deceased wife on fire but locked her in the house to avoid mobjustice, He confirmed that he recovered an axe with blood stain with some clothing's which had been burned besides the house and smoke could still be seen smouldering.

Chief Inspector WILSON YEGON also visited the scene and found a good number if members if the Public agitated and were baying for the deceased wife blood. He confirmed that the deceased was totally naked and disfigured. On his way to the deceased home, he noticed bloodstains on the soil and on the Napier grass through the deceased shamba along the foot path. That he was shown an axe which had bloodstain and a pair of socks written Tommy with bloodstain. He also confirmed to have seen some garments burning outside which appeared to have been lit that early morning. That Scene of crime personnel had been called who upon arrival photographed the body and the exhibits at the house.

*PW-7 {PC LINET WALEMA} was the investigating officer who visited the scene on the 11th February 2016. She states that they entered the deceased house and thoroughly examined the bedroom of the deceased and found a mattress which had some parts chopped off and around the area chopped off was dotted with blood. That she noted blood stain on the head stand of the deceased bed and in the children's room she found another mattress 3X6 with blood stain. That in the deceased bedroom there were bloodstain on the wall which was photographed. That they recovered some exhibits among them the burn cloth which **Caroline Wawira Muthike** the deceased daughter confirmed belonged to the deceased.*

The Doctor who performed the Post Mortem formed the opinion that the cause of death was due to cardiorespiratory arrest secondary to massive internal and external bleeding after assault by a heavy blunt object. He tendered the Post Mortem with the death certificate number 0014726 as Exhibit (5).”

15. The DPP's Submissions do not submit on the evidence of the last witness **PW8, Ambrose Muriuki**, a Data Analyst from Safaricom on examination of three (3) mobile phone numbers, two belonging to the 1st accused and one registered in the name of one John Njeru Njeri. PW8 could not tell whether the phones were in communication with the 3rd accused. In addition, there was no evidence that the phone registered under John Njeru belonged to the 3rd accused and there was no voice or text message between the phones to establish the conversations.
16. In this case, the Court has to come to the early conclusion at the stage of ruling on case to answer that the prosecution case based on alleged confessions by the prime suspect of this case, the 1st accused, who avoided the murder charge having already pleaded guilty to a lesser charge of manslaughter and was not called to testify in the case against the 2nd and 3rd Accused, and the alleged confessions were not produced by the Investigating Officer, if they existed. Moreover, it would appear that, even if proved, the 2nd accused's offence would only have been that of an accessory after the fact.

17. In this state of evidence, it is wholly unsafe to convict the 2nd accused and 3rd accused and the Prosecution will have to be content with the conviction for manslaughter of the 1st accused on her own plea of guilty.

ORDERS

18. Accordingly, for the reasons set out above, pursuant to section 306 (1) of the Criminal Procedure Code, the Court finds that there is no evidence that the accused persons before the Court committed the offence of murder and the Court, therefore, records a finding of not guilty.

19. Consequently, the 2nd and 3rd accused are acquitted of the offence of murder contrary to section 203 as read with 204 of the Penal Code.

20. The accused persons shall be released from custody forthwith, unless they are otherwise lawfully held.

Orders accordingly.

DATED AND DELIVERED THIS 27TH DAY OF NOVEMBER 2025.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Mamba for the DPP.

Mrs. Makworo for the 2nd Accused.

Mr. Ndana for the 3rd Accused.