



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Ali (Criminal Case 53 of 2019)**  
**[2025] KEHC 18260 (KLR) (Crim) (9 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18260 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL**  
**CRIMINAL CASE 53 OF 2019**

**K KIMONDO, J**  
**DECEMBER 9, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ALI HUSSEIN ALI ..... ACCUSED**

**RULING**

1. The accused is 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 5<sup>th</sup> August 2019, at Kasarani Sub-County within Nairobi County, the accused murdered Jeremiah Ndung'u (hereafter the deceased)
3. He pleaded not guilty. The prosecution marshalled thirteen witnesses. Twelve of them appeared before my predecessor, Ogembo J. On 16<sup>th</sup> 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 his defence.
5. The Republic lodged submissions dated 1<sup>st</sup> October 2025 while those by the accused are dated 17<sup>th</sup> July 2025.
6. According to the learned counsel for the Republic, Ms. Kigira, there is direct evidence linking the accused to the homicide. She relied on *Bhatt v Republic* [1957] E.A. 332 and *Nyaga Kiura v Republic* [2018] eKLR.
7. But according to learned counsel for the accused, Mrs. Njagi, the accused was not positively identified. Furthermore, the evidence of PW1, PW3, PW5, PW8 and PW9 who claimed to have identified the



attackers was not corroborated. She opined that there is insufficient direct or circumstantial evidence connecting the accused to the murder. Learned defence counsel relied on *Bhatt v Republic* [supra], *Republic v Abdi Ibrahim Owl*, Garissa High Court Criminal Case 6 of 2011 KEHC 2122 (KLR) and *Wamunga v Republic* [1989] KLR 424 among others.

8. I have paid heed to the evidence of some of the key witnesses. For instance, Simon Waweru Mucheru (PW1) claimed that he knew the accused for about three months. On 5<sup>th</sup> August 2019, at about 0200 hours, he saw the accused and other persons assaulting the deceased. His evidence in chief went as follows-

I went to check at the gate. I saw Jeremy (deceased) coming with a motorcycle behind him with 3 people. Ali (accused) was one of them. Kinyua was the other. I did not know the 3<sup>rd</sup> man. Kinyua also called Rasta, hit Jeremy with a rungu from behind and Jeremy fell down. They then came down. Ali, Kinyua and the 3<sup>rd</sup> man started hitting Jeremy with rungu. Ali had a panga. They kept beating him...

9. When the attackers fled, PW1 and others went to where the deceased lay. His face was swollen and had a panga cut. PW1, PW6, PW8 and PW9 ferried the deceased to a local clinic but were referred to Kiambu Level 5 Hospital.
10. According to Kelvin Mbugua (PW3), he knew the accused. He testified that on the material night at about 0200 hours, he was woken up by a neighbour. He claimed that he saw the accused and two other men attacking the deceased with rungus and pangas. Kennedy Sikulu Makhanu (PW5) and John Mwangi Kinangai (PW8) all claimed that they saw the three men attacking the deceased.
11. Benson Mugo Njuguna (PW2) is a brother of the deceased. He was informed by his cousin, Ben Mugo (PW9) of the incident. When he reached the hospital at Kiambu, he was directed to the mortuary where he saw the deceased's body. It had cuts on the upper lips, a swollen eye that had popped out and a fractured head. There was a deep cut on the back and left hand. One of the legs was broken.
12. PW2 identified the body for postmortem purposes which was carried out at Kenyatta University Hospital by Dr. Peter Ndegwa. The post mortem form (exhibit ) was produced by consent on 24<sup>th</sup> June 2025. According to the pathologist, the cause of death was "severe craniocerebral injuries due to blunt force trauma in keeping with assault".
13. It bears repeating that the accused is 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 accused.
14. Upon appraisal of that evidence; and, well guided by *Bhatt v Republic* [1957] E.A. 332 and *R v Kipkering arap Koske & another* 16 EACA 135 (1949), I find that the Republic has established a prima facie case.
15. Accordingly, under the provisions of section 306 (2) of the Criminal Procedure Code, I hereby place the accused person on his defence.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF DECEMBER 2025.**

**KANYI KIMONDO**

**JUDGE**

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



The accused.

Mr. Kamau Waweru holding brief for Mrs. Njagi for the accused instructed by Nduku Njagi & Company Advocates.

Mr. E. Ombuna, Court Assistant.

