

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL CASE NO. 72 OF 2012**

**REPUBLIC.....PROSECUTOR**  
**VERSUS**  
**SAMUEL TEDDY GITAU.....ACCUSED**

**JUDGMENT**

1. The accused was initially tried for murder, convicted and sentenced to death by the High Court (*Mutuku J*). On 4<sup>th</sup> February 2022, the Court of Appeal ordered for a fresh trial before any judge “*other than Muchemi & Mutuku JJ*”.
2. The accused is charged with *murder* contrary to section 203 as read with section 204 of the **Penal Code**.
3. The particulars are that on 3<sup>rd</sup> and 4<sup>th</sup> September 2012 at Umoja Road area in Ong’ata Rongai township within Kajiado County, he murdered *Mercy Wanjiku Muiruri*.
4. The prosecution called *eight* witnesses at the new trial. When the accused was placed on his defence, he denied committing the offence. He claimed that on 3<sup>rd</sup> September he went for work in the afternoon and leaving the deceased behind with their two minor children. He claimed that he only learnt of the death days later.

5. A summary of the evidence is as follows: *Charles Njaramba Chege* (PW1) was the accused's landlord. The accused and the deceased were living together in a House No. 1. On the material day, he received a call from another tenant, *Maina*, about the homicide. He went to the scene but did not enter the house. He and a brother of the deceased, *Ndonga*, reported the matter to police at Rongai. They returned with two police officers and broke into the house. It had been padlocked on the outside.
6. The next witness was the accused's son, *Brian Muiruri Wanjiku* (PW2). He is now aged 21 years but was a minor aged 9 at the time of the incident. He claimed that on 3<sup>rd</sup> September 2012, he returned home from school but found the house was padlocked. As he waited, he heard his two younger sisters crying inside.
7. He went around, peeped through a crack in the *mabati* and saw his father and mother in a heated argument. He testified that he saw the accused pick a stool and hit the deceased on the head. Fearing that the accused had seen him, he jumped over a wall and went to a neighbour's house. That house belonged to *Rispah Kathambi* (PW4). PW2 said that he spent the night there before moving to his aunt's place the following day.

8. Under cross-examination he admitted there were discrepancies between his statement and his testimony in court. He clarified that after he jumped over the wall he never saw the accused again; and, that when he peeped through the gap in the *mabati*, the accused was dressed but the deceased was naked.
9. *Daniel Ngugi* (PW3) is a brother of the deceased. When he got to the scene, he found a crowd milling outside. He saw the two small children of the deceased crawling outside. He did not see the accused or PW1. The deceased's body was under the bed covered with a blanket: Her head had an injury that had disfigured her face.
10. Like I stated, *Rispah Kathambi* (PW4) is a neighbor to the accused. On 3<sup>rd</sup> September 2012 at 6:00 p.m., she heard the two young children crying. The following day as she passed behind the accused's house, she saw the *mabati* wall had been cut. When she looked inside, she saw deceased's legs. The two toddlers were still crying. That is when PW4's husband broke the padlock. The body was under the bed with an injury at the back of the head.

11. Police Constable *Martin Kiogora* (PW5) is a scenes of crimes officer. He produced, by consent, fifteen photographs taken at the scene by his colleague, Sargeant *George Odhiambo* (exhibits 1 (a) to (o)). He also produced the report and accompanying certificate (exhibit 2).
12. PW6 was retired Chief Inspector of Police, *Francis Njue*. He received a report on 4<sup>th</sup> September 2012. At the scene, a one-roomed *mabati* house, he found the main door locked. At the back, an iron sheet had been removed. He said the police entered through that hole. Things were scattered; the body of a female adult was under the bed. It was naked in the lower part with an injury on the head and the private parts. The scene was processed and the body removed to the city mortuary.
13. The pathologist was *Dr. Peter Ndegwa* (PW7). According to the postmortem report (exhibit 3), the cause of death was "*asphyxiation due to manual and ligature strangulation*".
14. The accused was arrested by *Sgt Bernard Lunda* (PW8) at Kangundo Hospital, where he had been admitted in a critical condition. Upon his discharge on 10<sup>th</sup> September 2012, he was re-

arrested at Kangundo Police Station and transferred to Ongata Rongai Police Station.

15. As I stated earlier, the accused denied hitting the deceased with a stool or strangling her. He raised an *alibi* claiming that he was away at work when the murder happened. He said as follows-

*I am the accused and now aged 49 years. I had lived with deceased as husband and [wife for] five years. We had no disagreement or conflict with deceased at the time of death.*

*On 3<sup>rd</sup> and 4<sup>th</sup> September 2012, I went to Joska for work as usual. On 3<sup>rd</sup> September, I left deceased at home with two children of 2½ years. We spoke normally and there was no conflict. The third one was 9 years. I came to learn of the death later. After work, I passed by a club and drunk.*

*On 4/9/2012 I was involved in a construction accident. I got unconscious. It is doctors who summoned my aunt and relatives to come for me. I learnt of the deceased's death in the hospital or police station. I never escaped. I never hit the deceased with a stool as alleged by a witness. I deny that I strangled the deceased. I am not the one who killed her. I have been in custody all these years and affected by this unfortunate incident*

16. Under cross examination, he said that he left for Joska at 2.00 p.m. on 3<sup>rd</sup> September 2012 and did not return home. The accident he referred to happened when he fell from a ladder as he painted a client's house. He thus argued that it cannot be true that PW2 and PW4 saw him on 4<sup>th</sup> September.
17. Learned counsel for the accused, *Mr. Githaiga*, filed final submissions dated 4<sup>th</sup> December 2025. He submitted that the evidence of the so-called eye witness (PW2) is unreliable and riddled with inconsistencies. In particular, his claim that he saw the accused hit the deceased with a stool contradicts the findings by the pathologist (PW7). The defence also contended that the case was poorly investigated by the police and that there is no direct or circumstantial evidence pointing to the culpability of the accused.
18. In a synopsis, they contend that the evidence does not connect the accused with the homicide and falls far short of the threshold of proof; and, that in view of the *alibi*, his identification remains in doubt.
19. My findings are as follows. The burden of proof that the accused murdered the deceased lay squarely with the Republic.

***Woolmington v DPP*** [1935] AC 462, ***Bhatt v Republic*** [1957]

E.A. 332.

20. Section 203 of the **Penal Code** provides that *any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.*

21. There are three key ingredients that *must* be present: first, the prosecution must prove beyond reasonable doubt the *death* of the deceased and the *cause* of that death; secondly, that the accused *committed* the unlawful act that led to the death; and, thirdly, that the accused was *of malice aforethought*.

22. The death of the deceased is *no* longer in doubt. The cause of death has also been established. From the postmortem report made by *Dr. Peter Ndegwa* (PW7), the cause of death was “*asphyxiation due to manual and ligature strangulation*”.

23. I thus readily find that the death was *unlawful*. The next question then is whether the Republic proved beyond reasonable doubt that the accused, *of malice aforethought*, killed the deceased.

24. The eye-witness in this case was PW2. He is a son of the accused who was then aged 9. When he testified in this new trial,

he was now 21 years. According to him, he peeped through a crack in the *mabati* and saw his father and mother in a heated argument. He then saw the accused pick a stool and hit the deceased on the head. As I stated earlier, the conclusion by the pathologist was that the cause of death was “*asphyxiation due to manual and ligature strangulation*”.

25. That is why the defence contends that there is a contradiction on the cause of death. When cross examined on his findings, the pathologist was emphatic that-

*I don't imagine how a stool causing [sic] that injury. The strangulation was manual or by ligature. No other injuries other than on neck muscles*

26. However, the evidence of PW2 is corroborated by a number of other witnesses and evidence. Firstly, PW3 said the deceased's body had a visible head injury that had disfigured her face. Secondly, photographs 11 and 12 produced by PW5 show bloodied injuries to the face and the head. He also produced photograph 4 showing a broken stool but the stool was not produced at the trial. So much so that it is the evidence of the pathologist that seems off the mark. But what is material is that

all the evidence confirms the death; and, more importantly, that it was unlawful.

27. The *identification* of the accused by PW2 is beyond question. It was during the day and he knew his father. There is also no doubt that the accused spent the night of 2<sup>nd</sup> September 2012 in the house. Under cross examination, he said that he left for Joska at 2:00 p.m. on 3<sup>rd</sup> September 2012. He was in that house with the deceased and two toddlers.
28. Although the door to their one-roomed *mabati* house was padlocked from the outside, there was a gaping hole at the back through which an adult could leave or enter. He must have exited through it as explained by PW2. PW2 saw him through that gap having a heated argument with the deceased before he gave chase to him. The theory proffered by learned counsel, *Mr. Githaiga*, that an intruder may have gained access and murdered the deceased remains just that: a poor theory.
29. The accused testified that he was away in Joska when the murder occurred; and, that he learnt of the death days later. This *alibi* was raised well after the close of the prosecution's case. But it did *not* shift the burden of proof to the accused. See ***Republic***

**v Johnson** [1961] 3 ALL E.R. 969, **Saidi Mwakawanga v Republic** [1963] E.A. 6. Like I stated earlier, the legal burden of proof lay throughout with the prosecution. **Woolmington v DPP** [supra] **Bhatt v Republic** [supra].

30. I have thus *weighed* the *alibi* against the evidence of PW2 and PW4. I readily find that the accused was lying that he was miles away at another location in Joska. I studied his demeanour as he testified. It betrayed his version that he left the deceased alive with the two babies and never returned home that night. True he might have been injured at work or gone out on a drinking spree.

31. However, the truth is that he was found in a hospital at Kangundo in critical condition. I am alive that no medical records were availed by the State. According to PW3 and PW8, he had ingested some poison, a fact the accused denied. But the undisputed fact is that he was first arrested at the hospital and then re-arrested by PW8.

32. I have thus no doubt that he killed the deceased. From the nature of injuries and all the surrounding circumstances, it is also

clear that the death was premeditated. The entire *alibi* is a sham:  
He murdered the deceased and then disappeared from the scene.

33. The conduct of the accused is *inconsistent* with his plea of innocence. The deceased died as a direct *consequence* of his unlawful conduct. The entire corpus of direct, circumstantial and documentary evidence points *irresistibly* to his guilt.

34. The upshot is that the prosecution has proved the charge *beyond reasonable doubt*. The accused, *of malice aforethought*, caused the death of the deceased by an *unlawful* act. I accordingly enter a finding of *guilty* and *convict* him of *murder* contrary to section 203 as read with section 204 of the **Penal Code**.

It is so ordered.

**DATED, SIGNED** and **DELIVERED** this 3<sup>rd</sup> day of February 2026.

**KANYI KIMONDO**  
**JUDGE**

**Judgment 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.

Mr. Githaiga for the accused person instructed by Githaiga Munyeki & Associates Advocates.

Mr. E. Ombuna, Court Assistant.