



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Mwangi & another (Criminal Case 37 of 2018)  
[2026] KEHC 2677 (KLR) (Crim) (4 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 2677 (KLR)

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

**CRIMINAL  
CRIMINAL CASE 37 OF 2018**

**K KIMONDO, J**

**MARCH 4, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**AMOS MUIGAI MWANGI ..... 1<sup>ST</sup> ACCUSED**

**ALEX MUSEMBI MUSYOKA ..... 2<sup>ND</sup> ACCUSED**

**JUDGMENT**

1. On 13<sup>th</sup> June 2018, Doreen Kinya (hereafter the deceased) was travelling in matatu registration number KCC 021A operated by Zamzam 45 Limited along the Githurai route. At the Queen of Apostles Church on Thika Road, she fell out of the speeding vehicle.
2. The prosecution's case is that the two accused persons, who were the driver and conductor respectively, threw the deceased out from the moving vehicle leading to her death.
3. The Republic thus brought information to the High Court charging the two with murder contrary to section 203 as read with section 204 of the Penal Code.
4. The particulars are that on the 13<sup>th</sup> June 2018 at Queen of Apostles Church along Thika Nairobi Highway within Kasarani in Nairobi County they jointly murdered the deceased.
5. The prosecution marshalled ten witnesses. When the accused were placed on their defence, they elected to give sworn evidence and denied committing the offence.



6. According to the operator's supervisor, George Njoroge (PW3), the motor vehicle was assigned to the two accused persons as the driver and tout respectively. PW3 had been arrested by the police over the matter. He testified that-

"I was arrested to assist the police...and did not tell the police that I was a conductor. I was forced by the boss to give false information that I was a conductor. He told me to tell K-24 because the conductor had run away. I was forced to give false information since Alex had run away. I was taken to Kiambu court."
7. The evidence of PW3 must be weighed against that of Corporal Magdalene Lubale (PW8). She took down the statement of PW3 (exhibit 5). She said she was the only officer available at Kasarani at that moment in time and that she was unaware that PW3 was a suspect. PW3's statement implicated the 2<sup>nd</sup> accused.
8. PW8 added the following-

"Alex Mutiso was the one who was at the door way picking and dropping passengers. The statement did not mention anything concerning the driver of the motor vehicle. George Njoroge told me he was collecting fare from the passengers at the time of the accident. Alex Mutiso was at the doorway."
9. Lawrence Kariuki Karuri (PW7) was riding a bodaboda behind the matatu. At Roysambu near Safari Park Hotel, he saw a person fall from the bus. He testified as follows-

"There was a bus in front of me. A person had fallen from that bus. That person was rolling on the road. When I went near that rolling body, I saw it was a girl. She was lying face upwards. She had an injury on the forehead. Her eyes were protruding as she lay upwards. Her shoes and bag were next to her. The bus was ahead of her. I followed the bus. It stopped at Garden City Mall."
10. When PW7 enquired about the matter, four of the passengers and the bus conductor told him the deceased had jumped out of the vehicle. In cross examination, the witness could not confirm if there was a bus stage between the Safari Park Hotel and the Garden City Mall but said that the body lay next to some guard rails.
11. PW4 was Jacob Musyoka Mumbi also a conductor with the bus company. He testified that on the date of the incident, the 2<sup>nd</sup> accused called him at 3.00 p.m. informing him that an accident occurred and "that someone had fallen from a motor vehicle while moving and he (2<sup>nd</sup> accused) was scared". PW4 said he was arrested by the police to confirm whether he knew the 2<sup>nd</sup> accused or his whereabouts.
12. The deceased's body was identified for postmortem purposes by her father, John Mwiti Ithima (PW5) and the deceased's brother, Patrick Kinyua (PW6). According to the post mortem form made by Dr. S. Maingi and produced into the evidence by consent on 25<sup>th</sup> May 2022, the deceased died from "severe head injury due to blunt trauma consistent with a fall from a height".
13. Paul Njihia (PW1) is now an investigator with IPOA but previously worked as an Inspector of Police at Kasarani Police Station. He produced a set of 19 photographs of the bus taken on 11<sup>th</sup> July 2018 and accompanying certificate (exhibits 1 & 2). In the material part he confirmed that the bus had a lock on the passenger's door. On cross examination, he conceded that he could not tell whether the door was locked at the time of the incident.



14. PW9 was PC Patrick Nguruwi. He visited the scene the following day and drew a road-view sketch (exhibit 6). He also took the driver's license for the 1<sup>st</sup> accused (exhibit 7) and the insurance sticker for the matatu (exhibit 8). He recommended that the conductor be charged for the offence. The DCIO Kasarani then proceeded with further investigations.
15. When cross examined, he conceded that the matter was reported as a road traffic accident; that he was not at the scene; and, that the conductor against whom he recommended prosecution was PW3 and not the 2<sup>nd</sup> accused.
16. The last prosecution witness was Inspector of Police Mureithi Njagi. He was the investigating officer. His key evidence was that by 18<sup>th</sup> June 2018, PW3 had been arrested as a suspect and he obtained custodial orders from Kiambu Court to continue holding him. From the worksheets showing collections and details of the driver and conductor (exhibit 3), the two accused persons were the driver and conductor of the bus on 13<sup>th</sup> June 2018.
17. He also did an inventory witnessed by both accused and PC Phillip Mandenge (exhibit 9) as well as three receipts (exhibit 3(a), (b) and (c)). The witness produced a letter to the Registrar of Companies dated 19<sup>th</sup> June 2018 and the reply thereto confirming that Zamzam 45 Limited had two directors named therein (exhibits 10(A) & (B)). The particulars of the owner of the bus are per exhibits 11A & B.
18. He tracked down the 2<sup>nd</sup> accused through one Jacob who led the police to Phillip Mutinda and who in turn knew the 2<sup>nd</sup> accused. On 19<sup>th</sup> June 2018 PW10, PC Kyallo and a driver proceeded to Talasaa, where the parents of the 2<sup>nd</sup> accused resided. They arrested him at his sister's house. On 21<sup>st</sup> June 2018, PW10 re-arrested the 1<sup>st</sup> accused. The DCIO advised that PW3 and Phillip Mutinda be released. The understanding was that PW3 would be more useful as a witness.
19. Under cross examination, he agreed that no statement was taken from the bus passengers. He countered that there was sufficient evidence from the good Samaritan who took the deceased to the hospital as well as that of bodaboda riders such as PW7. He said he was unaware of a related or similar case involving the bus in Kitui or a civil case for damages lodged by the family of the deceased.
20. In re-examination, he said the police charged the two because "the accident happened on the highway and it was the responsibility of A1 and A2 to ensure passengers alight at designated stages"
21. When the 1<sup>st</sup> accused was placed on his defence, he stated as follows-

"I am employed by Zamzam 45 company as a driver. On 13.6.2018 at 2.30 – 3.00 p.m., I was at the stage at Githurai looking for passengers. I moved to the next stage at Roysambu. The vehicle now got full. It was Registration No. KCC 021A – Isuzu bus.

At Roysambu Roundabout, I asked whether any one wanted to alight so that I could use the service line. The conductor told me no one was. So I entered the highway and conductor locked the door. At Homeland where there are bumps, I got many bodaboda riders. They followed me hooting and blocked the bus. Upon enquiry they said a person had fallen out...

As the driver seats in a separate cabin, I can't see the back where passengers seat. At Homeland, a small personal car arrived with a good Samaritan who was carrying the deceased. She was still alive. It was a red Honda. I can't remember the number. He asked me to take her to hospital...I blocked the road for him and he did so. Instead of following him, I went to the police station at Kasarani, and reported."



22. The 2<sup>nd</sup> accused also protested his innocence. He claimed he was collecting fares at the back. He turned the blame on another conductor, Baite, who was manning the passenger door. He testified as follows-
- “On 13.6.2018 I was employed by Zamzam 45 matatu on Githurai – Nairobi route as a conductor. At Roysambu, my other conductor who I knew as “Baite” asked whether there was a passenger between there and Safari Park. No one answered.
- I was collecting fares. I heard a girl say “kwani mmenipitisha?” we had passed the stage. “Baite” told her to wait as she had not said so. “Baite” opened the door so that the passenger could alight at the next stage. He put a stopper at the bottom (Exhibit 1 photo 12). It was after Safari Park towards Garden City. I then heard other passengers saying someone had jumped out. Bodabodas surrounded us and finally blocked us at Homeland...”
23. Learned counsel for the defence, Mr. Ong’anya, filed detailed final submissions dated 19<sup>th</sup> November 2025. The case for the defence is that there is no direct or even circumstantial evidence proving that the deceased was pushed out of the moving vehicle. On the contrary, this was purely a road traffic accident and the only reason why the two accused persons were charged is that they were the driver and conductor respectively.
24. Learned counsel also argued that there are no eye witness to the alleged offence; and, that the evidence of PW7 supports the defence. The other limb of the submissions is that there is complete absence of a motive or any evidence suggesting that any of the accused killed the deceased or was of malice aforethought. Reliance was made on Republic v Benjamin Wainaina Njau [2018] KEHC 6895 (KLR) and Nzuki v Republic, Court of Appeal, Nairobi, Criminal Appeal 70 of 1991 [1993] KECA 83 (KLR).
25. The totality of the submissions is that the evidence is unreliable, fails to connect the accused with the homicide and falls far short of the threshold of proof.
26. 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.
27. 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.
28. 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.
29. The death of the deceased is no longer in doubt. It was confirmed by her father and brother (PW5 & 6). Furthermore, there is the emphatic evidence of the cause of death by Dr. S. Maingi who conducted the post mortem.
30. I thus readily find that the death was unlawful. The next question then is whether the Republic proved beyond reasonable doubt that any of the accused, of malice aforethought, killed the deceased.
31. I agree with the defence that the ideal eye-witness account would have come from other passengers. Sadly, none took to the stand. The good Samaritan, Peter Njoroge Kamau, who first took the deceased to hospital and the body to Kasarani Police Station did not also testify. In any case, he arrived at the scene shortly after the incident.



32. But there is the evidence of PW7. He was a bodaboda rider riding behind the matatu. He saw a person fall out and roll onto the road. When he went near the body, it was lying face upwards with an injury on the forehead. The errant bus did not stop until it was blocked by other riders at the Garden City Mall.
33. When the two accused persons were placed on their defence, they did not contest the fact that the deceased fell out of their vehicle on the main highway. They both claimed that they did not take to the service lane (which had a stage at Safari Park Hotel) because none of the passengers had indicated at the Githurai Stage that they needed to alight at Safari Park.
34. If I can stop there briefly, it means that there is no contest that the two accused were in the matatu at the material time. It was daytime and their identification is positive. See generally *Wamunga v Republic* [1989] KLR 424; *Maitanyi v Republic* [1986] KLR 198 at 201.
35. So, did the deceased jump out or was she pushed out of the moving vehicle by the 2<sup>nd</sup> accused? Did the driver and conductor who were in control of the vehicle fail in their duty to ensure that the deceased disembarked safely? Was this an ordinary road traffic accident or a murder?
36. Firstly, the two accused persons readily admit that they were the driver and conductor of the matatu at the material time. According to PW7, he was right behind the matatu when he saw the deceased fall out of the moving vehicle and roll on the ground. I also accept the evidence of PW10 that “the accident happened on the highway and it was the responsibility of A1 and A2 to ensure passengers alight at designated stages”. Both accused persons also conceded that the accident occurred on a major highway.
37. The version of the accused is that at the Githurai stage, the driver (1<sup>st</sup> accused) or the alleged second conductor, Baite, enquired whether any passenger wished to alight at Safari Park. Since there was no positive answer, the bus left the service lane which had a stage at Safari Park and joined the highway. In cross-examination, the driver claimed he could not have made a stop on the highway when the deceased said she wanted to alight.
38. Although the driver testified that he was seated in a separate cabin from his passengers, it was a lie. The photographs produced at the trial, particularly photograph number 4 show that this was a bus in which the driver shared the cabin with all passengers. From where he sat, he could see the passenger door or whether it was open. I agree however, that once a passenger started to go down the stairs, his view of the passenger would be blocked by the door. But that would only happen if the door was open.
39. From the evidence of PW1 and the photographs, the door had a lock that would shut it closed. From the evidence of both accused persons, once the door is opened, the conductor engages another lock at the bottom to keep it open. As submitted by learned counsel Mr. Ong’aya, this is how conductors emerge outside and bang the body for the driver to stop.
40. I have also kept in mind that this was a 51-seater matatu. PW2 said that it would have two conductors, one to collect fares and another to man the door. I have warned myself against the evidence of PW3. He was a suspect who turned a state witness. He implicated the 2<sup>nd</sup> accused as the conductor who was manning the passenger door. As I will analyze later, the driver (1<sup>st</sup> accused) freely admitted at the trial that at the material time the only conductor in the vehicle was the 2<sup>nd</sup> accused.
41. The truth then is that for the deceased to have fallen out of the door, the door was open. It was not closed at the Githurai stage as he alleged. The other truth is that the deceased fell out on the highway, the bus never stopped despite screams from other passengers and only did so when it was blocked by bodaboda riders.



42. The other truth is that the other conductor known as Baite is a phantom created by the 2<sup>nd</sup> accused. I say so, firstly, in view of the evidence of PW2 and PW10 that the two accused persons were the crew and, secondly, because the driver, (1<sup>st</sup> accused) conceded on oath that at the time of the incident, the vehicle had only one conductor, the 2<sup>nd</sup> accused.
43. But I did not believe the 1<sup>st</sup> accused that he could not stop on the highway. True, it may have been a breach of traffic regulations but granted the circumstances, it was not as grave as causing the death of the deceased. The 1<sup>st</sup> accused chose to keep moving as the 2<sup>nd</sup> accused left the door open for the deceased to die.
44. They both admitted that they heard some noise or protest from a girl saying the vehicle had passed her stop. They clearly ignored her plea. By continuing to speed when the passenger door was open, they both knew or ought to have known that any passenger attempting to alight would suffer grievous harm or even death. It was grossly negligent and reckless; a total disregard for the safety and life of the deceased.
45. The mens rea is also evident from the conduct of the 2<sup>nd</sup> accused. He went underground. PW10 tracked him down through one Jacob who led the police to Phillip Mutinda and who in turn knew the 2<sup>nd</sup> accused. On 19<sup>th</sup> June 2018 PW10, PC Kyallo and a driver proceeded to Talasaa, Machakos where the parents of the 2<sup>nd</sup> accused resided. They arrested him at his sister's house. I draw a clear negative inference which is a pointer to a guilty mind.
46. In summary, there is no direct evidence that the 2<sup>nd</sup> accused threw or pushed out the deceased from the moving vehicle. What is not in doubt, is that the vehicle was being driven on the highway with its passenger door open. None of the two accused heeded to the plea by the deceased to let her alight. From the evidence of PW7, the deceased fell out and the body rolled onto the tarmac. Clearly, the driver and conductor who were in control of the vehicle failed in their duty to ensure that the deceased disembarked safely. This was no ordinary road traffic accident.
47. I thus find that both accused had malice aforethought as defined in section 206 (b) of the Penal Code. The entire corpus of direct, circumstantial and documentary evidence points irresistibly to their guilt.
48. 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 each of them of murder contrary to section 203 as read with section 204 of the Penal Code.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF MARCH 2026.**

**KANYI KIMONDO**

**JUDGE**

Judgment read virtually on *Microsoft Teams* in the presence of: -

Ms. Kigira for the Republic instructed by the office of the Director of Public prosecutions.

Mr. Ong'anya instructed by Ong'anya Ombo Advocates for the accused.

Mr. E. Ombuna, Court Assistant.

