

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL CASE NO. 1 OF 2019**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JAMES NDEGWA MWANIKI.....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 25<sup>th</sup> December 2018, at about 23:00 hours within Tasia Stage in Embakasi Sub-County within Nairobi County, he murdered *No. 43104 PC Charles Nyambeneria Oigoro* (hereafter *the deceased*)
3. He pleaded *not guilty*. The prosecution marshalled *six* witnesses. Five of them appeared before my predecessor, *Wakiaga J.* On 19<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 19<sup>th</sup> January 2026 while those by the accused are dated 19<sup>th</sup> December 2025.

6. According to the learned counsel for the Republic, *Ms. M. Kigira*, there is direct evidence linking the accused to the homicide. She relied on among other cases, ***Bhatt v Republic*** [1957] E.A. 332 and ***Ronald Nyaga Kiura v Republic*** [2018] eKLR.

7. But according to learned counsel for the accused, *Mrs. Gulenywa Jonathan*, there is no clear evidence that the accused attacked the deceased or hit him with a stone on the head. She opined that there is insufficient direct or circumstantial evidence connecting the accused to the murder. Learned defence counsel relied on ***Republic v Musau & another*** [2025] KEHC 698 (KLR), ***Republic v Abdi Ibrahim Owl***, Garissa High Court Criminal Case 6 of 2011 KEHC 2122 (KLR) among others.

8. I have paid heed to the evidence of some of the key witnesses. According to *PC Hanset Asioko* (PW1) he joined the deceased at Bailey's Club at about 8:20 p.m. The deceased was having some meat and enjoying drinks with other friends. At about 10:30 p.m., there was a commotion outside the bar. He added in chief-

*The guard told us that someone was causing disturbance within the bar who started to throw stones. The deceased came out to inquire what was happening. I followed him and the soldier [guard] told us that the person was ahead of us*

*so that we could arrest him. When the deceased attempted to arrest him he pushed him and he fell down. I was following him closely from behind at about five meters. I saw him pick up a stone and hit the deceased...the accused had pushed him and when he fell down he hit him with a stone*

9. The accused was apprehended at the scene. When PW1 was cross-examined, he admitted that the deceased was “old and small bodied” and was quite drunk. That is why the defence submits that the deceased may have been injured in a fall and not hit by the deceased.

10. *Vincent Yohana Opiyo* (PW4) was a waiter at the club. He testified that he knew the accused; and, that on this night, he threw him out from the premises because he was a nuisance to other patrons. He then instructed the guard, *Dennis Orora Nyaundi* (PW5), not to allow him in. The latter claimed to have seen the accused throw a stone against the iron-wall of an Mpesa shop. The deceased then came out to make enquiries. PW5 pointed out the accused. The deceased followed the accused. However, PW5 did not witness the attack upon the deceased.

11. The postmortem was carried out at Kenyatta University Funeral Home by *Dr. Johansen Oduor* (PW6). There was a needle on the right hand showing medical intervention. Blood was oozing from the mouth and nose; there was a fracture on the head; and, bleeding in the brain. According to his post mortem report (exhibit 2), the cause of death was “*head injury due to blunt trauma*”.
12. 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.
13. 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.
14. 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 14<sup>th</sup> day of April 2026.

**KANYI KIMONDO**  
**JUDGE**

**Ruling 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.

Mrs. Gulenywa for the accused instructed by Gulenywa Jonathan & Company Advocates.

Mr. E. Ombuna, Court Assistant.

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