

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION

CRIMINAL CASE NO. E055 OF 2022

REPUBLIC.....PROSECUTOR

VERSUS

SEVERIO MWEBI ONCHIRI.....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 the 12th August 2022 at Gramsons Apartments Magorofani, Bahati Estate in Kamukunji Sub-County within Nairobi County he murdered *Cynthia Moraa Onchiri* (hereafter *the deceased*).
3. The prosecution marshalled *twelve* witnesses. I am now called upon to determine whether there is *sufficient* evidence that calls for a *rebuttal* from the accused.
4. The republic lodged submissions dated 27th November 2025 while those by the accused are dated 9th March 2026.
5. According to the learned counsel for the defence, *Mr. Manthi Mwaniki*, the prosecution's case is weak and built atop unsubstantiated suspicions. He attacks the republic's witnesses and

documentary evidence as disjointed and unreliable. He submitted that the prosecution “has not presented any shred of evidence that directly points to the accused committing any wrongful act that led to the death”.

6. He relied on a number of precedents including **Ndungu v Republic** [1985] KLR 487, **Republic v Ademi** [2026] KEHC 1358 (KLR), **Tubere s/o Ochen** (1945) and **Woolmington v DPP** [1935] AC 462. 12 EACA 63.
7. But according to the learned Principal Prosecution Counsel, *Ms. M. M. Kigira*, there is direct and strong circumstantial evidence linking the accused to the murder.
8. She relied on **Ahamad Abolfathi Mohammed & Another v Republic**, Nairobi Criminal Appeal 135 of 2016 [2018] eKLR, **Republic v Andrew Omwenga** [2009] eKLR, **Republic v EKK** [2018] eKLR, **Bhatt v Republic** [1957] E.A. 332 and **Nyaga Kiura v Republic** [2018] eKLR.
9. The key evidence went as follows: The accused and the deceased were living together in a two-roomed unit at Gramstone Apartments. Their two children, *T.M.M.* and *R.O.M.* [particulars withheld] were in the house at the time of the incident and testified as PW1 and PW2

respectively. They claimed that the parents had a loud quarrel before retiring to bed.

10. PW1 said in cross-examination that at about 03:00 hours, *“my mother was screaming but it is like she was choking”*. She then saw the accused leaving the house. She followed him but did not catch up. When she returned to the house, she found her brother (PW2) on the balcony. Smoke was billowing from the house. Their attempts to gain access to their parent’s bedroom were futile.
11. The fire was eventually put out by their neighbours including PW5 and PW10. From the combined evidence of PW6, PW7 and PW12, the body was lying on the lower deck of a double decker bed. The upper body was extensively burnt.
12. According to the deceased’s sister, *Jane Kwamboka* (PW3), when she saw the body at the city mortuary, it had burns on part of the face and chest area as well as an injury at the back of the head. The postmortem was carried out by *Dr. Peter Ndegwa* (PW9). He said the base of the skull was fractured; and, that the cause of death was *“head injury due to blunt force trauma”*.
13. There is then the evidence of the Government Analyst, *Dr. Mwendo Muthini* (PW8). He said that traces of petrol were detected

in the door frame, soot from the bedroom wall, piece of wood and burnt clothes in the bedroom.

14. Lastly, *Gideon Zacharia Mongi* (PW4) testified that on the night of the murder, he saw the accused dressed in a jacket and carrying “*something underneath like a kibuyu*” but the accused told him that it was a loaf of bread. When the accused returned to the plot the following morning, he was sobbing. PW4 comforted him but alerted the police who came and arrested him.
15. 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.
16. 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 prosecution has established a *prima facie* case.
17. 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 21st day of April 2026.

**KANYI KIMONDO
JUDGE**

Ruling read virtually on Microsoft Teams in the presence of-

Accused.

Mr. Manthi and Mr. Asuma for the accused instructed by Abel B. C. Asuma & Company Advocates.

Mr. Bickoh for the republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.