



**Republic v Kimathi (Criminal Case 50 of 2012)  
[2026] KEHC 4971 (KLR) (Crim) (21 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4971 (KLR)

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

**CRIMINAL  
CRIMINAL CASE 50 OF 2012**

**K KIMONDO, J**

**APRIL 21, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**DANCUN LIVINGSTONE KIMATHI ..... 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 between the 30<sup>th</sup> June 2012 and 1<sup>st</sup> July 2012, at Kiamako area in Githunguri within Kiambu County, jointly with others not before the court, murdered Sarah Akello Aruwa (hereafter the deceased).
3. The prosecution marshalled seventeen witnesses. Twelve of them appeared before my predecessor, R. Lagat-Korir J. On 28<sup>th</sup> October 2022, 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 23<sup>rd</sup> February 2026.
6. According to the learned counsel for the Republic, Ms. M. Kigira, there is a combination of direct, circumstantial and documentary evidence linking the accused to the homicide. She relied on among other cases, *Bhatt v Republic* [1957] E.A. 332, *Phillip Nzaka Watu v Republic* [2016] eKLR and *Ronald Nyaga Kiura v Republic* [2018] eKLR.



7. But according to learned counsel for the accused, Mr. Ong'ato, the prosecution's evidence is disjointed, contradictory and unreliable. He submitted that the accused was not positively identified as the killer. For instance, the deceased embarked on a date to meet one Daniel Mureithi and not the accused. The forensic evidence by the document examiner (PW7) and the notebook (exhibit 1) were assailed as a poor connection between the accused and the death of the deceased. He also submitted that there was no DNA match between the buccal swab from the accused and the samples extracted from body of the deceased.
8. In a synopsis, learned defence counsel opined that the prosecution failed to prove the charge beyond reasonable doubt. He relied on *Republic v Okodet* [2025] KEHC 7177 (KLR) and *Republic v Abdi Ibrahim Owl*, Garissa High Court Criminal Case 6 of 2011 KEHC 2122 (KLR) among others.
9. I have examined the key evidence. The deceased and the accused were both students at the United States International University (USIU). Ivy Gathu (PW2) was also a student there and a friend to the deceased. She testified that on the weekend of 30<sup>th</sup> June 2012, the deceased confided in her that she was going out to meet a boy she had met at the university library.
10. Hellen Atieno Aruwa (PW1) is the mother of the deceased. On 30<sup>th</sup> June 2012, a male caller rang her using the deceased's line and demanded a ransom of Kshs 100,000. A more menacing and derogatory demand was made to her on 1<sup>st</sup> July 2012. Jim Onyango (PW9) was present at the time and tried to negotiate the amount down to Ksh 70,000. By then, the matter had been reported to Kasarani Police Station. This was the beginning of a nightmare for the family that ended with the discovery of the deceased's body at Ngewa, Githunguri.
11. PC John Amalemba (PW8) and AP Officer Samuel Njuguna visited the scene where a crowd of "about 100 villagers was standing on the roadside" waiting for the police. The body was inside a thicket about 2 to 3 metres off the road. He added that as they waited for scene of crime personnel-

At 11.30 a.m., a saloon car came with some men inside and one stepped out and passed the rope which we had tied. Members of the public asked them who they were and answered that he was a police officer. He was informed that we were there that he approaches us. We were 7 metres away. He did not come to us. He entered the car and sped off.
12. According to this witness, the man who emerged from the car "was a big man who was of slightly dark complexion. He was a young man with lots of hair". On 10<sup>th</sup> July 2012 he claimed to have identified him at Kasarani Police Station, where he was in custody. The contentious identification parade was conducted by SSP Valentian Wambutsi (PW17).
13. There is then the evidence of Paul Muiuru (PW12). On 30<sup>th</sup> June 2012 at 10.30 a.m., he hired out his motor vehicle KBH 642R Toyota NZE Saloon to the accused. He produced a copy of the receipt and driving licence in the name of Duncan Kimathi (Exhibit No. 10(a) & (b) ). The customer's cell phone was indicated as 0717370647. A tracking device showed the car in Ngewa in Ruiru heading towards Githunguri.
14. According to PW3, PW6, PW9, PW15 and PW17, they broke into the deceased's room at her hostel on 2<sup>nd</sup> July 2012 with the assistance of the caretaker. One of the items recovered was the deceased's notebook (exhibit 1) and which was submitted for forensic analysis by PW7. According to PW9, the notebook contained two phone numbers: 0727872133 and 0717370647. When some mobile money was transmitted to the latter number, it identified the recipient as Dancun Livingstone Kimathi.



15. PW16 was Jonathan Limo, working at the Safaricom Law Enforcement Liaison Office. He produced the subscriber and call data records for six mobile lines (exhibits 16 to 28). He said the number 0717370647 was registered to Duncan Kimathi.
16. According to the head of security at USIU, Boniface Kibiego Koech (PW15), he knew the accused as a student at the campus. He also confirmed that the deceased was a student at the university.
17. Samuel Ruwa (PW5) is an uncle of the deceased. On 9<sup>th</sup> July 2012, he identified the remains at the City mortuary: The face was swollen; and it had some injuries around the neck.
18. The postmortem was carried out by Dr. Johansen Oduor (PW13). There was laceration at back of the head; bruises on neck; and, the tongue was protruding from the mouth. She had suffered cyanosis – poor oxygenation before death. According to the post mortem report (exhibit 11), the cause of death was “neck compression by manual strangulation”.
19. 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.
20. 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.
21. 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 21<sup>ST</sup> DAY OF APRIL 2026.**

**KANYI KIMONDO**

**JUDGE**

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

The accused.

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

Mr. Ong’ato for the accused instructed by Ong’ato Ochieng & Company Advocates.

Mr. E. Ombuna, Court Assistant.

