



REPUBLIC OF KENYA



Republic v Gitau (Criminal Case 69 of 2023) [2025] KEHC 5204 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5204 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT OL KALOU**

CRIMINAL CASE 69 OF 2023

KW KIARIE, J

APRIL 30, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH KAMAU GITAU ACCUSED

RULING

1. Joseph Kamau Gitau is charged with an offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. The particulars of the offence are that on the 4th day of March 2023, at Gathiriga, in Kipipiri area Sub County within Nyandarua County, he murdered Esther Wambui Wanjiru.
3. The evidence adduced against the accused was evidence of suspicion. James Wachira Mungai (PW1) testified that the accused was implicated in the offence by his sister, Wangui. He did not testify why she implicated him, and she was not called as a witness. Without calling Wangui. This is inadmissible hearsay.
4. Benson Mwangi Waithaka (PW7) testified that the deceased and the accused went to his shop, where the deceased wanted some loose change. This was between 2 p.m. and 3 p.m. This is circumstantial evidence. In the case of *Mohamed & 3 Others vs Republic* [2005] 1KLR 722, Osiemo, Judge restated what circumstantial evidence is, as follows:

Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved.



5. Earlier, in the case of Republic vs Kipkering arap Koskei & Another 16 EACA 135, the Court of Appeal held:

In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

6. Had the prosecution presented evidence concerning the time of the deceased's death, it might have been helpful. However, this was not the case. The doctrine of "last seen with" cannot equally be invoked.
7. The other witnesses adduced evidence of suspicion without explaining why the accused was suspected of being the killer. The Court of Appeal in the case of Sawe vs Republic [2003] KLR 354, held as follows:

Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.

8. After considering the evidence on record, the question is whether the prosecution has established a prima facie case against the accused person. In the Black's Law Dictionary, 10th Edition prima facie case is defined as follows:

Prima facie case. (1805) I. The establishment of a legally required rebuttable presumption.
2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.

9. The Court of Appeal in the case of Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335, defined a prima facie case as follows:

It may not be easy to define what is meant by a "prima facie case", but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defence.

10. Article 50 (2) (i) of *the Constitution* of Kenya provides:

- (2) Every accused person has the right to a fair trial, which includes the right—
(i) to remain silent, and not to testify during the proceedings;

In the instant case, if the accused person opts to exercise his constitutional right as stated above, I cannot enter a conviction based on the evidence on record. This therefore means that the prosecution has failed to establish a prima facie case against him. I accordingly acquit him of the offence of murder under section 306 (1) of the *Criminal Procedure Code*. He is set at liberty unless otherwise lawfully held.

DELIVERED AND SIGNED AT OL KALOU THIS 30TH DAY OF APRIL 2025

KIARIE WAWERU KIARIE

JUDGE

