



**Republic v Musimbi alias Seto (Criminal Case E066 of 2022)
[2025] KEHC 5248 (KLR) (Crim) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5248 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E066 OF 2022
K KIMONDO, J
APRIL 29, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

SETRICK NADWA MUSIMBI ALIAS SETO 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 17th May 2021 at about 19:30 hours at Eastleigh Stage along Racecourse Road, in Kamukunji Sub-County within Nairobi County jointly with others not before the court, murdered Peter Macharia Kamau.
3. He pleaded not guilty. The prosecution lined up nine witnesses. I am now called upon to determine whether that corpus of evidence is sufficient to place the accused on his defence.
4. The Republic lodged submissions dated 22nd January 2025. Learned counsel for the defence equally filed detailed submissions dated 28th February 2025.
5. According to learned counsel for the Republic, Ms. Kigira, there is sufficient evidence on the homicide that calls for a rebuttal from the accused.
6. The accused on the other hand contends that there is no direct evidence connecting him with the death; and, that the key witnesses including PW1, PW2, PW5 and PW6 gave contradictory or unreliable accounts of the killing. He argued that there was no clear motive and that the circumstantial evidence does not irresistibly or exclusively point to his guilt.



7. His learned counsel, Mr. Olala, relied on a number of precedents including *Republic v Abdi Ibrahim Owl*, Garissa High Court Criminal Case 6 of 2011 KEHC 2122 (KLR) and *Nzuki v Republic*, Court of Appeal, Nairobi, Criminal Appeal 70 of 1991 [1993] eKLR for the proposition that the evidence does not rise to the required threshold of proof.
8. My finding is as follows. It bears repeating that the accused is still deemed innocent at this stage. The inquiry at this juncture is merely to establish if a prima facie case has been made out requiring a rebuttal from the accused.
9. John Karanja Kamau (PW1) knew both the accused and the deceased. He testified that on 17th May 2021, at around 19:30 hours, a scuffle ensued between touts manning the matatu stage at the OTC area on Racecourse Road. There are conflicting accounts regarding the details of the fight. But from the accounts by PW1, PW4, PW5 and PW6, the tussle involved two rival groups: Aldana Sacco and Eastleigh Sacco.
10. PW1 said that when the deceased sought fees from an Eastleigh matatu, the accused punched him. He then grabbed a knife from the trolley of an egg vendor, John Kimani Wanjiru (PW2) and stabbed the deceased on the shoulder and took off.
11. According to PW2 it was a small knife with rough edges. He said the accused used it to stab the deceased. When PW2 tried to snatch it, he was cut on his finger. In his evidence in chief, he said he managed to retrieve the knife but under the cross, he said he never succeeded.
12. The death of the deceased is no longer in doubt. The deceased's mother, Lydia Njeri Kamau (PW3) saw the lifeless body at Park Road Nursing Home and also identified it for postmortem purposes at the Kenyatta University Hospital Mortuary.
13. Doubt is also removed by the post-mortem examination conducted by Dr. Johansen Oduor (PW9). His opinion was that the cause of death was "chest injuries due to penetrating force trauma".
14. Applying the precedents in *Bhatt v Republic* [1957] E.A. 332 and *R v Kipkering arap Koske & another* 16 EACA 135 (1949); and, upon the digest of the evidence of all the nine witnesses, I find that the Republic has established a prima facie case against the accused.
15. Accordingly, under the provisions of section 306 (2) of the *Criminal Procedure Code*, I now place the accused on his defence.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF APRIL 2025.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

Accused.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Olala for the accused instructed by Kipchirchir & Associates Advocates.

Mr. E. Ombuna, Court Assistant.

