



**Republic v Nyagilo (Criminal Case 17 of 2018)
[2025] KEHC 5062 (KLR) (Crim) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5062 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 17 OF 2018
K KIMONDO, J
APRIL 29, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

PATRICK RADING NYAGILO 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 31st January 2018 at Utawala/ Mihango junction in Embakasi Sub-County within Nairobi County the accused murdered Elizabeth Kalekye.
3. He pleaded not guilty. The prosecution marshalled five witnesses. Two of them appeared before my predecessor, Mutuku J. On 24th July 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 12th February 2025. Learned counsel for the defence, Ms. Nyamongo, opted not to file submissions at this stage.
6. According to learned counsel for the Republic, Ms. Kigira, there is sufficient direct evidence linking the accused to the homicide; and, that on the totality of the evidence, the accused has a case to answer.



7. My finding is as follows. 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.
8. Susan Kamene Kimotho (PW3) is a sister to the deceased. On 31st January 2018, she received a call from the deceased's line. The caller informed her that the deceased was shot. She linked up with the caller at Mihango Modern Komarock Hospital. The deceased had injuries on the neck and stomach. PW3 claimed that the deceased told her that Patrick shot her. The deceased was later transferred to Kenyatta Hospital where she died.
9. The autopsy was conducted on 7th February 2018 at the hospital by Dr. Andrew Gachie (PW1). The post-mortem report (exhibit 1) discloses that the cause of death was "multiple injuries due to multiple gun-shot wounds".
10. PW4 is retired Police Corporal Joel Ougo. He testified that on 12th March 2018, the police placed a road-block at Mai Mahiu area to intercept "some robbers on the way to Limuru". A motor vehicle registration number KBL 306Q Toyota Silver approached but failed to stop. The spikes pierced its front tyres bringing it to a halt. The police arrested the occupants, five men and one woman. The witness claimed that a Ceska Pistol Serial No. 513910 was recovered from the accused. 6 live ammunitions and 3 empty cartridges were recovered.
11. Police Corporal Njuguna Kinuthia (PW5) testified that he and his colleagues, PC Wamae and PC Ahmed, recovered two spent cartridges and one misfired bullet at the scene at Mihango. He submitted the items for ballistic examination.
12. PW2 was Inspector of Police Reuben Bett, a ballistics examiner formed the opinion that the Ceska Pistol Serial No. B513910 was capable of firing and that the ammunition marked C1-C9 were capable of being fired from it. According to him, they were firearm and ammunition as defined under the [Firearms Act](#).
13. From the microscopic comparison of the shell casings marked B1 and B2 as well as a misfired round marked B3 submitted to him by PW5, he concluded they were all fired from the said pistol. His report is dated 21st March 2018 (exhibit 4).
14. Applying the precedents in *Bhatt v Republic* [1957] EA 332 and *R v Kipkering arap Koske & another* 16 EACA 135 (1949); and, upon the digest of the evidence of all the five 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. M. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Ms. E. Nyamongo for the accused.



Mr. E. Ombuna, Court Assistant.

