



REPUBLIC OF KENYA



**Republic v Karinga (Criminal Case 2 of 2015) [2025] KEHC 7098 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7098 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE 2 OF 2015  
EM MURIITHI, J  
MAY 29, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**TERESIOS JAMUMO KARINGA ..... ACCUSED**

**RULING**

**Introduction**

1. This is a ruling on a case to answer pursuant to section 306 of the *Criminal Procedure Code*. The issue before the Court is whether there is prima facie evidence that the accused person(s) committed the offence of murder contrary to section 203 as read with 204 of the *Penal Code*, having regard to the elements of the offence of murder as observed in *R. v Nyambura & 4 Others* (2001) KLR 355, and approved by the Court of Appeal in *Antony Ndegwa Ngari v R* [2014] eKLR.
2. At this stage, the Court considers the prosecution evidence to establish whether a prima facie case exists, which as held in *Ramanlal T. Bhatt v. R* (1957) EA 332, 335 is “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.”
3. Where the Court finds that a prima facie case has been established as held in *Kibera Karimi v. R* (1979) KLR 36 (*Trevelyan & Todd JJ*) so as not to prejudice the fair trial of the case by giving the impression that the court has already made up its mind without hearing the defence. See also *Festo Wandera Mukando v. R* (1976 – 80) KLR 1626 and *Antony Njue Njeru v R*, Nairobi C.A. Cr. Appeal No. 77 of 2006 and the Kenya Judiciary Criminal Procedure Benchbook, 2018 at 99-100.
4. Where the court does not find that a prima facie case for the offence to have been established, a finding of not guilty is entered on the accused person pursuant to section 306 (1) of the *Criminal Procedure Code*, and the accused is entitled to an acquittal, (see *Murimi v. R* (1967) EA 542 and *Wachira v. R*



(1975) EA 262), and the Court is required to give full reasons for the decision at this stage of case to answer, being a final decision for the trial court.

### **The Charge**

5. The accused person was charged with Murder Contrary to Section 203 as read with Section 204 of the Kenyan [Penal Code](#). The Particulars of the offence are that on the 26<sup>th</sup> & 27<sup>th</sup> December, 2014 at Gichonjo, Njuki-ini Location within Kirinyaga County jointly with others Murdered John Muriithi Macai.

### **Evidence**

6. Pw-1 Harrison Ndambiri Kariuki testified that he was informed of the deceased not having returned home on the 27<sup>th</sup> December 2014 after being in the company of the accused. That on 31<sup>st</sup> December 2014 a shoe suspected to belong to the deceased was discovered along River Nyamindi. He confirmed that indeed the deceased body was found floating on River Nyamindi.
7. Pw-2 Alexander Njogu Samuel testified that he was with both the deceased and the accused on 26<sup>th</sup> December 2014 at about 2000 hrs. He reiterated that the accused was not drinking but the deceased was. That at about 2200 hrs, they left the premises while heading home and he with other friends took a path that led them to the main tarmac leaving the deceased with the accused behind and that was the last he saw him.
8. Pw-3 Alice Wangithi Kagimbi testified on the discovered the body of the deceased floating on River Nyamindi. She recognized the body as that of {John Muriithi} the deceased.
9. Pw-4 Purity Njoki Muriithi was the wife to the deceased who testified that the deceased left home on 26<sup>th</sup> December 2014 but did not return and that she got to learn the accused was the last person to have been with the deceased before his body was found on River Nyamindi.
10. Pw-5 Edwin Muriuki Chomba confirmed that indeed the body of the deceased was found on River Nyamindi.
11. Pw-6 Peter Miano Karinga had been called on his phone by the deceased on the fateful day at 11.00 pm but they did talk as he was unreachable on the phone.
12. Pw-7 Mercy Wambui Muriithi is a daughter of the deceased. She knew the accused as a neighbor. She did not expect the accused to harm her father.
13. Pw-8 James Muthike Josia had gone to drink with the accused and the deceased. They left the bar at night. The following morning, he was informed that the deceased was missing. He does not know what happened to the deceased.
14. Pw-9 Geoffrey Chania No. 232056 Superintendent of Police produced C.I. Gutu forensic analysis report on handwritten documents of the accused.
15. Pw-10 Jaffar Masoud No. 76312 Corporal the investigating officer stated that he did not know of any confrontation between the deceased and the accused. There is no evidence of who was last scene with the deceased. The accused had written two notes denying being involved with the disappearance of the deceased. He connected the death with the accused.
16. Pw-11 Dr. Ndirangu Karomo produced the post-mortem on behalf of Dr. Njiru who performed the Post Mortem and formed the opinion that the cause of death was due to drowning and signed death certificate No XXXXXX



### **Prosecution submissions**

17. Section 203 of the Penal code places the burden of the Prosecution to prove that –
  - (1) The death of the deceased occurred.
  - (2) The death was through unlawful acts or omission of the accused.
  - (3) The accused person had malice aforethought.
18. They submit that the evidence tendered so far places the accused persons at the scene of the crime squarely and the death of the deceased was due to the wrongful act of the accused persons.

### **Accused Submissions**

19. The accused submits that whereas the evidence adduced by the prosecution conclusively proved that the death of the deceased occurred, it did not adduce any iota of evidence to prove that the death was through unlawful acts or omissions of the accused who had malice aforethought. Malice aforethought is comprehensively defined in s.206 of the Penal Code and we respectfully invite the court to re-visit the provision and weigh it against the evidence adduced which made no attempt at showing that the accused caused the death of the deceased and that in causing the death he had malice aforethought. The evidence adduced is that the body of the deceased was discovered floating on River Nyamindi on 3<sup>rd</sup> January, 2015. According to the prosecution's own submissions, P.W.7, Dr. Njiru G.N. who performed the post mortem formed the opinion that the cause of death was due to drowning. No evidence was adduced to prove the specific point of the long River Nyamindi at which the deceased drowned or that the accused was present at the point and time the deceased drowned.
20. Purity Njoki Muriithi who is the deceased's widow testified under cross-examination that on 26.12.2014 it was Njogu, P.W.2 who lured the deceased to Gichonjo Market where he undertook to buy him beer. The deceased initially resisted saying that he was untidy as he had come from the farm where he had been spray ing his coffee and he had no money. He eventually gave in after Alexander Njogu Samuel (P.W.2) insisted and persuaded him to go to Gichonjo Market. The deceased's widow also testified that she was told by Chomba P.W.5 that the deceased was left with one John Mwaniki, a relative of P.W.2 on the fateful night but when she asked John Mwaniki about it, he told her that the deceased was left with the accused.
21. It was the prosecution's case that at Gichonjo Market the accused sat together with the deceased, P.W.2, P.W.8 and other people who were either friends or relatives of P.W.2. They left together and headed to their respective homes which were in the same direction. According to the deceased's wife under cross-examination (see page 37 of the typed proceedings) the person who would reach his home first was the accused, followed by P.W.2, then one James Muthike, a brother to John Mwaniki. She was categorical that the deceased's home comes before that of the accused. This evidence was corroborated by the evidence of P.W.8, James Muthike Josia whose testimony under cross-examination was that from Gichonjo Market one would reach the home of the deceased before reaching that of the accused. From all this evidence the picture that clearly emerges is that unless cogent and credible contrary evidence was adduced. there was no probability of the accused having been the last person to be with the deceased when he was alive.
22. The accused submits that the other theory on the basis of which the prosecution charged the accused was that the deceased's shoes were found on the river bank bordering the accused's land. Under cross-examination, P.W.1, Harrison Ndambiri Kariuki testified that shoes alleged to belong to the deceased were actually collected from the river bank which is riparian land and does not therefore belong to any



private person. He proceeded to testify that the land bordering the river bank belongs to the accused's father and not to the accused and that villagers pass through the accused's father's land to access River Nyamindi.

23. The accused submits that the other theory used by the prosecution to arraign the accused for murder is that she attempted to influence witnesses namely P.W.2 Alexander Njogu Samuel, his relatives and friends John Mwaniki and James Muthike to record statements tallying with hers presumably to exonerate her from wrongdoing. According to P.W.2 the accused gave him and the two named persons the accused wrote two letters and gave them to John Mwaniki and James Muthike so that they could record similar statements (see P.W.2's evidence on page 24 of the typed proceedings). These documents turned out to have been photocopies of portions of the accused's statement to the police in which the accused denied any role in the death of the deceased.

### **Issue**

24. Whether the accused persons have a case to answer.

### **Analysis**

25. Having considered the testimonies of the six prosecution witnesses, the question is whether the evidence tendered establishes a prima facie case against the accused, or whether the accused has a case to answer under Section 306 (1) of the *Criminal Procedure Code*. See Ramanlal Trambaklal Bhatt v R [1957] E.A 332 at 335, supra.
26. Section 203 of the Penal code places the burden of the Prosecution to prove that-
- 1) The death of the deceased occurred.
  - 2) The death was through unlawful acts or omission of the accused.
  - 3) The accused person had malice aforethought.
- See R. v. Nyambura, supra.

### **The death of the deceased occurred**

27. The death of the deceased is not disputed. Pw11- produced the post-mortem on behalf of Dr. Njiru who performed the Post Mortem and formed the opinion that the cause of death was due to drowning and signed death certificate No XXXXXXX.

### **That the accused persons committed the unlawful act which caused the death of the deceased**

28. It was the prosecution's case that at Gichonjo Market the accused sat together with the deceased, P.W.2, P.W.8 and other people who were either friends or relatives of P.W.2. They left together and headed to their respective homes which were in the same direction. There is no evidence that the accused was last seen with the deceased. Further, there was no evidence that he killed the deceased. The doctrine of last seen with would require that it be established as a fact that it was the accused who had been seen with the deceased before the evidential burden may shift to the accused in terms of section 11 of the *Evidence Act*.



29. See *Kamau v Republic (Criminal Appeal E131 of 2022) [2024] KECA 1193 (KLR)* (20 September 2024) (Judgment) where the Court of Appeal explained the doctrine of last seen with as follows:

“31. This Court in the case of *Kimani vs Republic (Criminal Appeal 41 of 2022)* [2023] KECA 1390 (KLR) held that:

“The doctrine of ‘last seen alive’ is based on circumstantial evidence where the law prescribes that the person last seen with the deceased before their death was responsible for his or her death and the accused is expected to provide an explanation as to what happened.”

32. In the case of *Dida Ali Mohammed vs R Nakuru Court of Appeal Criminal Appeal No. 178 of 2000 (UR)* it was held that:

Then there is the circumstantial evidence which shows that it was the appellant who was the last person seen with the deceased before her death...As to when the deceased left the appellant’s home and upto where the latter escorted her are matters which were peculiarly within the appellant’s knowledge which we think, under section 111(1) of the *Evidence Act*, he was the only person who could but did not explain. And the evidence of recovery of the deceased’s body consequent upon information the appellant gave are all circumstances which when taken cumulatively lead to irresistible conclusion that the appellant and no other person killed the deceased, and which exclude any other reasonable hypothesis than that the appellant killed the deceased.”

And in the case of *Moingo & Another v. Republic [2022] KECA 6 (KLR)* this Court reiterated that: The fact that the deceased was last seen in the hands and restraint of the appellants, a prima facie case was established to require the appellants to give a reasonable explanation as to what befell him. Even though the onus of proof in criminal cases always rests squarely on the prosecution at all times, the Last Seen doctrine in the prosecution of murder or culpable homicide cases is that, where the deceased was last seen with the accused, there is a duty placed on the accused to give an explanation relating to how the deceased met his/or her death. In the absence of any explanation, the court is justified in drawing an inference that the accused killed the deceased).” See also *Ngeno vs Republic (Criminal Appeal 24 of 2016)* [2024] KECA 757 (KLR).”

30. In this case the deceased was last seen with several people as they left together to their respective homes and there was no evidence that the accused was at the scene of the drowning which cause his death.

### **That the accused had malice aforethought**

31. The accused submits that the evidence adduced is that the body of the deceased was discovered floating on River Nyamindi on 3<sup>rd</sup> January, 2015. According to the prosecution’s own submissions, P.W.7, Dr. Njiru G.N. who performed the post mortem formed the opinion that the cause of death was due to drowning. No evidence was adduced to prove the specific point of the long River Nyamindi at which the deceased drowned or that the accused was present at the point and time the deceased drowned. Pw10 - testified that he did not know of any confrontation between the deceased and the accused. There is was no evidence of who was last seen with the deceased. That the accused had written two notes denying being involved with the disappearance of the deceased does not provide cogent evidence of involvement or connection with the death with the accused. There not being evidence of accused’s



involvement in the act of drowning which caused the deceased's death, there is no question of malice aforethought.

32. The Court must return a verdict that under section 306(1) of the *Criminal Procedure Code* there is no evidence that the accused committed the offence. In accordance with section 306(1) of the CPC, the Court shall enter a finding of not guilty and acquit the accused for the offence of murder contrary to section 203 as read with 204 of the *Penal Code*.

### **Orders**

33. Accordingly, for the reasons set out above, the Court records a finding of not guilty for the offence of murder contrary to section 203 as read with 204 of the *Penal Code*.
34. The accused is acquitted.
35. There shall be an order that the accused's surety be discharged and the security deposited for his bail be released to the depositor.
36. File Closed.

Order Accordingly.

**DATED AND DELIVERED THIS 29TH DAY OF MAY 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Mamba for DPP.

Mr. I. W. Muchiri for the Accused.

