



**Republic v Kahihu & another (Criminal Case E009 of 2024)  
[2025] KEHC 9140 (KLR) (Crim) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9140 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
CRIMINAL CASE E009 OF 2024  
KW KIARIE, J  
JUNE 27, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**GEOFFREY KINUTHIA KAHIHU ..... 1<sup>ST</sup> ACCUSED**

**SAMUEL KUNG’U WAIRIMU ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. Geoffrey Kinuthia Kahihu and Samuel Kung’u Wairimu are charged with murder contrary to section 203, as read with section 204 of the *Penal Code*.
2. The particulars of the offence are that on diverse dates between the 6<sup>th</sup> & 8<sup>th</sup> day of February 2024, at Gwa Kanyua area of Magumu location, in South Kinangop Sub County within Nyandarua County, they murdered Leah Mukami.
3. The deceased was a child aged 8 years. After she went to school on February 6, 2024, she did not return home. Her body was recovered on the 8<sup>th</sup> day of February 2024. The two accused were implicated because of some talk they allegedly had at a “muguka place”
4. Kennedyedy Mwangi Njeri (PW4) testified that on 8 February 2024, at approximately 7:30 p.m., he was at Edith’s Muguka shop. The first accused informed the second accused that he had luggage he wanted the latter to transport for him and that he would pay him Kshs. 200. The two then departed. After an hour had passed since their departure, Njigwa informed them that the lost child had been found dead. This was the only evidence that linked the two accused to the offence. This was



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. The prosecution did not attempt to prove the nature of the luggage. Without evidence of its contents, we cannot conclude that it was the body of the deceased child. The accused persons were, therefore, charged on suspicion. 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.

7. After considering the evidence on record, the question is whether the prosecution has established a prima facie case against the accused. In *Black's Law Dictionary*, 10th Edition, a 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.

8. The Court of Appeal in the case of *Ramanlal Trambaklal Bhatt vs R* [1957] E.A 332 at 334 and 335 defined 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.

9. 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 this instance, if the accused persons choose to exercise their constitutional right, as previously mentioned, I cannot convict any of them based on the current evidence. Therefore, the prosecution has not established a prima facie case against them. I hereby acquit each of them of the charge of murder under section 306(1) of the *Criminal Procedure Code*. Each is set at liberty unless they are lawfully detained for another reason.

**DELIVERED AND SIGNED AT NYANDARUA THIS 27<sup>TH</sup> DAY OF JUNE 2025**

**KIARIE WAWERU KIARIE**



**JUDGE**

