



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Constant (Criminal Case 9 of 2019)
[2025] KEHC 9222 (KLR) (Crim) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9222 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE 9 OF 2019**

K KIMONDO, J

JUNE 24, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH SIMIYU CONSTANT ACCUSED

RULING

1. The accused is charged with two counts of 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 22nd January 2019 at Shauri Moyo in Kamukunji Sub-County within Nairobi County the accused murdered Melisa Simiyu and Venesa Simiyu.
3. He pleaded not guilty. The prosecution marshalled nine witnesses. Two of them appeared before my predecessors, Mutuku J and Bwonwonga J. On 24th April 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 4th April 2025. Learned counsel for the defence, Mr. Mburu, 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 findings are as follows. It is not contested that the accused was the father of the deceased children. Millicent Anyango Otieno (PW1) was his wife of 10 years but they had since separated. According to her, she went to Garissa Lodge, Eastleigh, to shop for clothes on 18th December 2018. When she returned at 5:00 p.m., an argument ensued between her and the accused and he asked her to leave. She claimed that he beat her up and she relocated to her sister's place in Embakasi.
8. She reported the assault to Shauri Moyo Police Station and was advised to seek treatment. She learnt of the death from the neighbours of the accused. By the time she went to the scene, the accused had been arrested. She saw the two bodies on a mattress lying face down. The older one was bleeding from the nose.
9. Douglas Ondieki Mahagwa (PW4) is a neighbor of the accused. He had last seen the children on 19th January 2019 accompanied by the accused heading out to church. On 22.1.2019 at about 4:00 a.m., his wife woke him up and told him "amam wamekufa". That was in reference to the deceased. He went to the scene and found the deceased children lying on the floor of the accused's house. He did not believe the explanation by the accused that a stranger stabbed and poisoned them.
10. PW4 advised the accused to report the matter to Shauri Moyo Police Station. The accused went for treatment at Morningside Clinic where he was referred to Mama Lucy Hospital. PW4 said that the accused decided to go back to his house for a change of clothes. He said the public wanted to lynch the accused. Police officers arrested him at the scene.
11. Mwanatibu Ali (PW3) is a grandmother of the deceased. On 29th January 2019, she identified the bodies at the City Mortuary for post mortem purposes. The autopsy was conducted by Dr. Grace Midigo (PW5). The post-mortem reports for both deceased (exhibit 1 a & b) disclose that the cause of death was "penetrative injury to the left chest wall with left haemothorax". Samples were taken for further toxicology analysis.
12. There is then the evidence PW7 Cpl Samuel Kimani. He confirmed that the accused had injuries on his chest. He claimed to have stabbed himself. The witness testified that when he visited the scene later with the accused, he showed him a "suicide note" (exhibit 3). PW7 prepared two Exhibit Memos (exhibits 4 a & b) relating to contents of two bottles found in the house as well as the samples extracted from the bodies of the deceased during the postmortem.
13. According to Dr Muende Muthini (PW8), the Government analyst, he detected acaricide/insecticide in the stomach and liver samples from Melisa as well as the empty bottle labelled A1. Acetamiprid, an insecticide, was also detected in the empty bottle of Bedlam labelled A2. Regarding Venesa, he found similar chemicals in her liver and stomach samples. His respective reports were produced as exhibits 5 (a) & (b).
14. 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.
15. Upon the digest of the evidence of all the nine witnesses; and, guided by the precedents in *Bhatt v Republic [1957] E.A. 332* and *R v Kipkering arap Koske & another 16 EACA 135 (1949)*, I find that the Republic has established a prima facie case against the accused.
16. 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 24TH DAY OF JUNE 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.

Mr. E. Ombuna, Court Assistant.

