



REPUBLIC OF KENYA



**Republic v Gitau (Criminal Case 72 of 2012)
[2025] KEHC 9026 (KLR) (Crim) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9026 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 72 OF 2012
K KIMONDO, J
JUNE 24, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMUEL TEDDY GITAU ACCUSED

RULING

1. The accused person is charged with murder contrary to section 203 as read with section 204 of the *Penal Code*.
2. The particulars are that on 3rd and 4th September 2012 at Umoja Road area in Ong'ata Rongai township within Kajiado County, he murdered Mercy Wanjiku Muiruri.
3. He pleaded not guilty. The prosecution closed its case after the testimony of eight witnesses.
4. Both learned Prosecution Counsel and that of the defence opted not to file submissions at this stage.
5. I have paid heed to the evidence of some of the key witnesses. Charles Njaramba Chege (PW1) was the accused's landlord. He said the accused and the deceased were living together. He received a call from another tenant, Maina, about the homicide. He went to the scene but did not enter the house. He and a brother of the deceased, Ndonga, reported the matter to police at Rongai. They returned with two police officers and broke into the house. It had been padlocked on the outside.
6. The next witness was the accused's son, Brian Muiruri Wanjiku. He is now aged 21 years but was a minor aged 9 at the time of the incident. He claimed that on 3rd September 2012, he returned home from school but found the house locked with a padlock. As he waited, he heard his two younger sisters crying inside. He said he went around, peeped through a crack in the mabati house and saw his father and mother in a heated argument. He then saw the accused pick a stool and hit the deceased on the



- head. Fearing that the accused had seen him, he jumped over a wall and went to his neighbour's (PW4's) plot where he spent the night before transferring to his aunt's place the following day.
7. Under cross-examination he admitted discrepancies between his statement and his testimony in court. He clarified that after he jumped over the wall he never saw the accused again; and, that when he peeped through the gap in the mabati, the accused was dressed but the deceased was naked.
 8. Daniel Ngugi (PW3) is a brother of the deceased. When he got to the scene, he found a crowd milling outside. He saw the two small children of the deceased crawling outside. He did not see the accused or PW1. The deceased's body was under the bed covered with a blanket: Her head had an injury that had disfigured her face.
 9. Rispah Kathambi (PW4) is a neighbor to the accused. She testified that on 3rd September 2012 at 6:00 p.m., she heard the two young children crying. The following day as she passed behind the accused's house, she saw the mabati was cut. When she looked inside, she saw deceased's legs. The two toddlers were still crying. That is when her husband broke the padlock. The body was under the bed with an injury at back of the head.
 10. PW6 was retired Chief Inspector of Police, Francis Njue. He received a report on 4th September 2012. At the scene, a one-roomed mabati house, he found the main door locked. At the back, an iron sheet had been removed. He said the police entered through that hole. Things were scattered; the body of a female adult was under the bed. It was naked in the lower part with an injury on the head and the private parts. The scene was processed and the body removed to the city mortuary.
 11. The accused was arrested Sgt Bernard Lunda (PW8) at Kangundo Hospital, where he had been admitted in a critical condition. Upon his discharge on 10th September 2012, he was re-arrested at Kangundo Police Station and transferred him to Ongata Rongai Police Station.
 12. There is then the evidence of the pathologist, Dr. Peter Ndegwa (PW7). He concluded that the cause of death was "asphyxiation due to manual and ligature strangulation".
 13. Upon the digest of the evidence of all the eight witnesses; and, cognizant of the precedents in *Bhatt v Republic* [1957] EA 332 and *R v Kipkering arap Koske & another* 16 EACA 135 (1949), I find that the Republic has established a prima facie case that calls for a rebuttal from the accused person.
 14. Accordingly, under the provisions of section 306 (2) of the *Criminal Procedure Code*, I hereby place the accused person on his defence.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 24TH DAY OF JUNE 2025.

KANYI KIMONDO

JUDGE

RULING READ VIRTUALLY ON MICROSOFT TEAMS IN THE PRESENCE OF: -

The accused.

Ms. Kigira for the Republic instructed by the office of the Director of Public prosecutions.

Mr. Githaiga for the accused person.

Mr. E. Ombuna, Court Assistant.

