



**Republic v Githaiga alias Peter Mwangi Githaiga (Criminal Case
E031 of 2020) [2025] KEHC 11630 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11630 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E031 OF 2020**

JM NANG'EA, J

JULY 31, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN MWANGI GITHAIGA ALIAS PETER MWANGI GITHAIGA ... ACCUSED

JUDGMENT

1. This is a very long pending case instituted way back in 2020. The above named (hereinafter referred to as “the Accused”) was on 5th November 2020 arraigned in this court on information and charge of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence state that on the 13th of October 2020 at Lusiru Location, Njoro Sub County, within Nakuru County he murdered Mercy Njeri Mbatia (hereinafter referred to as “the Deceased”).
2. The Accused denied the offence.

The Prosecution case

3. Part of the prosecution evidence was recorded before my brother (H. M. Nyaga J) who has since transferred to another work station. This court took over the case on 5th November 2024 and directed that hearing would continue from the point the previous court left off.
4. The Prosecution evidence is that on 13th October 2020 at around 11:00 a.m. PW2 was in his farm when he heard screams emanating from another farm adjacent to his. He learnt that the noise was from the Accused’s house which had caught fire. Area residents were helping put out the fire but PW2 could not see the Accused he knew was Mwangi among them. After the fire was successfully fought, PW2 stated that he saw the Deceased’s body on a bed in the house. He recognized the body as that of the Accused’s wife called Njeri. The body was under a smoldering blanket and was partly burnt. The throat appeared slit open.



5. According to PW2, he called and alerted the area chief of the incident, who soon arrived with police officers and took away the body. Earlier, the witness had noticed that the Deceased had ceased staying with the Accused.
6. PW6 told the court that he was also working on his farm on the material date when he was informed of the fire by one George Githaiga. The latter reported that his uncle he named John/Peter Mwangi set his house on fire. The witness confirmed PW2's testimony as to putting out of the fire and discovery of the Deceased's body in the house. PW6 also stated that he knew the Accused and the Deceased well and that the two were in a marriage relationship but later separated.
7. PW1 testified that the Deceased was his elder sister. On 13/10/2020 at around 8:00 a.m. the Deceased left home to get charcoal from one Peter Mwangi, the Accused herein. She took long to return home, and at 11:00 a.m. their neighbour informed him that the Deceased was dead at the home of the Accused. PW1 further stated that he rushed to the stated homestead where he saw the Deceased's lifeless body. Her throat had been slit open and he body was partly burnt. The police soon came and removed the body.
8. PW1 further stated that the Deceased had lived with the Accused herein for 9 months before she returned home after a disagreement. The Accused's parents had visited their home but their mother rejected a marital union between the Accused and the Deceased. PW1 continued to state that the two had a child together. He had not heard of a physical fight between the couple.
9. PW3 is the Deceased's mother. She had returned home on 13th October 2020 at around 7:00 a.m. to learn from her grandchildren that the Deceased had left to collect charcoal. Then someone informed her of the sad news of her daughter's killing. She too went to the Accused's home where she saw the Deceased's burnt remains. She knew the Accused's home since she used to visit the couple there. The two lived together but she had rejected the Accused's proposal to marry her daughter because he was "not good" in her view. Nevertheless, the Deceased went on to live with the Accused and had one child with him. The Deceased had then returned home and dealt in charcoal for a living.
10. Dr. Titus Ngulungu (PW4) is a Pathologist who conducted post-mortem examination on the Deceased's body on 19/10/2020. The body was in a pair of black trousers that was burnt and a skirt. The clothes bore blood stains. There were deep burns to the upper and lower limbs. A slash wound was on the lower neck, oriented horizontally involving the muscles and trachea.
11. Internally, the lungs had collapsed and the blood vessels of the neck and oesophagus were severed.
12. The doctor formed the opinion that the cause of the Deceased's death was massive blood loss as a result of sharp trauma to the neck. The autopsy report dated 19th October 2020 was tendered and admitted as evidence.
13. PW4 also told the court that he extracted blood samples, high vaginal swab and pubic hair from the Deceased's body for forensic analysis. At the police request, The Government Chemist (PW8) examined the specimen alongside blood, saliva and finger nail cuttings samples from the Accused and didn't find a nexus with the Accused. The Expert Witness could not establish whose blood was on the sword allegedly found in possession of the Accused.
14. PW5 and PW7 were among Police Officers who went to the scene of the alleged arson. They found the Deceased's body in a burnt house said to belong to the Accused. The body was taken to the mortuary as investigations continued. Members of the public at the scene related that the suspect was the Deceased's husband.



15. On 16/10/2020 at around 5:00 PM, PW5 received information that the Accused had been seen at a place called Mathangauta. With the assistance of Administration Police Officers based in the area, the Accused was arrested. He was allegedly in possession of an insecticide, a Somalia sword and a manila rope. The police suspected that the Accused was contemplating suicide.
16. PW7 was the Investigations Officer and confirmed the evidence of PW5 and other prosecution witnesses. He exhibited the sword and the manila rope said to have been in possession of the accused. He further produced a pair of female shoes; a pair of male shoes, a cell phone and photographs of the body of the deceased taken at the scene. PW7 also produced his certificate dated 2nd March 2023 in respect of processing of the photographs. He had personally taken the photos using his phone before they were processed. The shoes were found in the burnt house and were suspected to belong to the Deceased and the Accused.
17. The Accused was put on his defence at the close of the prosecution evidence and chose to offer sworn evidence. Stating his name as John Mwangi Githaiga, he denied knowing or having a relationship with the deceased. He disowned his other purported name as per the information and charge sheet. On 13th October 2020 when the Deceased is said to have died he was in his Mau Narok farm where he was arrested. He was living in a rented premises as would be confirmed by his landlord. The Accused therefore denies committing the offence appearing to put up an alibi defence that he was not at the scene of the arson at the material time.
18. Learned Counsel for the Prosecution and the Defence filed their final written submissions which the court has carefully perused against the record.
19. In homicide cases, death is presumed to have been unlawfully caused unless it is otherwise accidentally caused in circumstances that make it excusable. The Ugandan cases to wit; Uganda V. Lydia Draru Alias Atim HCT-00-CR-SC-0404 High Court of the Republic of Uganda and Akol Patrick & Others vs Uganda (2006) HCB (Vol. 1) 06 and the Court of Appeal for East Africa in R vs Gusambiza s/o Wesonga 1948 15 EACA 65 also cited the Prosecution submissions inter alia underscore the legal position .
20. The Accused raises an alibi defence which is a strong rebuttal of the prosecution case if proven. The judicial determination in Charles Kasena Chogo vs Republic {2019} eKLR and R vs Mahoney (1979) 50 CCC among many other cases, however, holds that failure to disclose an alibi defence at a sufficiently early opportunity may determine the weight to be given to it. It is underscored that early disclosure enables the police to investigate the veracity of the defence and avoid prejudice that may otherwise be occasioned to the Prosecution.
21. Case law in Republic vs Gideon Wambua Kioko & 2 Others (2019) eKLR lists three essential elements of the offence of murder as hereunder;
 - i. The death and cause of death of the deceased.
 - ii. That the accused caused the death through an unlawful act or omission.
 - iii. The accused possessed the intention to cause harm, or kill, or malice aforethought.

Issues for Determination

22. The sole issue for determination is whether the prosecution has proved beyond reasonable doubt that the Accused murdered the Deceased, actuated by malice aforethought.



23. There is no direct evidence linking the accused to the killing as none of the witnesses testified to seeing the accused burning his house or otherwise commit the offence. Determination of the case therefore wholly depends on circumstantial evidence. In *Mwangi vs Republic* (Criminal Appeal No. E054 of 2023) [2024] KEHC 3113 (KLR) 15 March 2023) (Judgment) this court explained that for circumstantial evidence to be reliable it must be inconsistent with the Accused person's innocence.
24. In the case of *Ahamad Abolfathi & Another vs Republic* (2018) eKLR also cited by the Prosecution Counsel, it was elaborated that;
- “circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence.”
25. In a much older case (*Republic vs Taylor, Weaver & Donoram* (1928) Cr. Application R 21), it was observed that;
- “Circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that is circumstantial.”
26. In the often quoted case of *Sawe vs. Republic* (2003) KLR 364, it was stated that circumstantial evidence must satisfy three tests, namely;-
- “the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”
27. As in the case of *R vs Kipkering Arap Koskei* (1949) EACA 135 Counsel further made reference to, the prosecution must also show that there existed in-culpatory facts that were incompatible with the innocence of the Accused and incapable of any explanation upon any other reasonable hypothesis other than that of guilt.
28. Section 206 of the *Penal Code* provides that malice aforethought is proven by one or more of the following circumstances;-
- a. Intention to cause death or do grievous harm whether the death actually occurs or not.
 - b. Knowledge that the act or omission causing death will probably cause the death or grievous harm to a person, whether the death is actually caused or not.
 - c. An intention to commit a felony.
 - d. An intention by an act or omission to facilitate flight or escape from custody of any person who attempts to commit a felony.
29. The prosecution does not have to prove the motive for commission of any crime, and neither is the evidence of motive sufficient by itself to prove commission of a crime by a person who possesses the motive (see Case law in *Robert Onchiri Ogeto vs Republic* (2004) KLR (1a)
30. PW1, PW2, PW3 and PW6 all said they knew the Accused's home where he lived with the Deceased. This is the homestead in which the Deceased's burnt remains were found. It is further noted that there



was a disagreement that caused the couple to separate which gives a glimpse as to a possible motive for the killing. The Accused's conduct of abandoning his home after the incident further betrays his guilt.

31. The alibi defence is not therefore credible and does not displace the prosecution evidence. It appears to be an afterthought as notice was not given to the Prosecution as required in law. Such notice need not be formal but may be implied from the Accused's cross-examination of witnesses or otherwise make known to the prosecution to allow for investigations to counter or confirm the defence. The incriminating circumstances unerringly point to the Accused's guilt.

Determination

32. In the premises, I find that the prosecution proved the charge beyond reasonable doubt. The Accused is accordingly convicted thereof pursuant to the provisions of section 215 of the [*Criminal Procedure Code*](#).

J. M. NANG'EA, JUDGE.

Judgement delivered this 31st day of July 2025 in the presence of:

Mr Wakasyaka for the DPP

Mr Machoka Advocate for Mr. Githui Advocate for the Accused

Accused, present

Court Assistant (Jeniffer)

J.M. NANG'EA, JUDGE.

