



**Republic v Ayieko (Criminal Case 16 of 2020)
[2025] KEHC 11149 (KLR) (Crim) (29 July 2025) (Directions)**

Neutral citation: [2025] KEHC 11149 (KLR)

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

**CRIMINAL
CRIMINAL CASE 16 OF 2020**

K KIMONDO, J

JULY 29, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

ZADDOCK OCHUKA AYIEKO ACCUSED

DIRECTIONS

1. The accused is charged with murder contrary to section 203 as read with section 204 of the *Penal Code* particulars being that on the 18th February 2020, at Mama Lucy Hospital in Embakasi Sub-County within Nairobi County, he murdered Daniel Mburu Wangari (hereafter the deceased).
2. Unfortunately, the original court file in this case is lost. Perhaps the better term would be to say that it cannot be traced. But the circumstances surrounding its loss are quite unique: The trial was conducted at Nairobi by Ogembo J, now also deceased. The learned judge heard 25 witnesses for the prosecution and placed the accused on his defence. The accused defended himself and the learned judge retired to write the final judgment.
3. Sadly, the learned judge passed on in Siaya County before delivering the judgment. The original file and the exhibits were not recovered from his chambers or homes in Siaya and Nairobi. That is why I stated that the original file is lost.
4. What is now available is an incomplete skeleton file containing a copy of the Information, evidence of 22 of the witnesses as well the final submissions made by the Republic and the accused. It is not clear if learned counsel for the victims filed any submissions and no such submissions are on the file.
5. The following parts of the record are missing-



- a. The of evidence of prosecution witness PW5 who was stood down on 3rd March 2022. However, he seems to have then testified as PW7 on 26th May 2022.
 - b. The entire proceedings for prosecution witnesses PW20, PW21 and PW22.
 - c. The evidence in chief of prosecution witness PW25.
 - d. The original exhibits submitted to the court. However, I would venture to think that the firearm, magazines, ammunition or cartridges (exhibits 1-4; 12 (a, b & c); 13 (a, b & c); 16 (1-3); 17 (1-3) for instance were surrendered back to the prosecution for safekeeping. I am not certain if any copies of scene of crime photos (exhibit 22) are still available.
 - e. The ruling under section 306 (2) of the [Criminal Prosecution Code](#).
 - f. The entire testimony by the accused in his defence.
6. Needless to say, the materials in the skeleton file cannot be compared with the original. But on 3rd February 2025, I directed that all the materials be supplied to the parties. They all seem to agree that the available proceedings are a true reflection of the proceedings. Accordingly, further proceedings may proceed under this skeleton file.
 7. On 15th July 2025, I sought further views from the parties in the presence of the accused. The DPP, the IPOA and learned counsel for the victims proposed that the case be re-opened for defence hearing only. But learned counsel for the accused proposed that the court proceeds to deliver a final judgment.
 8. My view is as follows. First and foremost, the decision whether to proceed from where the matter had reached belongs to the accused but subject to any directions by the court under section 200 (3) of the [Criminal Procedure Code](#). The history I have set out above is only a guide for his election.
 9. Secondly, I have stated that whole portions of testimony of three prosecution witnesses are missing, as well as parts of the evidence in chief of another witness. The entire testimony by the accused in his defence is equally missing and so are original exhibits. It follows that some of the positions taken by the parties may not be practical.
 10. Granted the unique circumstances surrounding the loss of the original file; the reasons above; and, in the interests of justice, I now order as follows-
 - a. That the available parts of the proceedings in this skeleton file particularized above shall be deemed to be a true record and may be so certified. The trial shall accordingly proceed on the basis of this reconstructed file.
 - b. The prosecution and the defence shall provide available exhibits or copies of documents produced at the trial and shown in the list of exhibits as items 1 to 27 but with exception of firearms and ammunition highlighted in paragraph 5 (d) above.
 - c. That the matter shall now proceed for formal directions under section 200 (3) of the [Criminal Procedure Code](#).

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JULY 2025.

KANYI KIMONDO

JUDGE

Directions 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. Amendi for the accused instructed by Billy Amendi & Company Advocates.

Mr. Nyagah for the victim's family.

Mrs Nzwii for IPOA.

Mr. E. Ombuna, Court Assistant.

