



**Director of Public Prosecutions v Mithika (Criminal Case  
66 of 2016) [2024] KEHC 6392 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6392 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE 66 OF 2016  
TW CHERERE, J  
MAY 30, 2024**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... PROSECUTOR**

**AND**

**EDWARD GITONGA MITHIKA ..... ACCUSED**

**RULING**

1. Edward Gitonga Mithika (Accused) is charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#) in that he murdered Daniel Kuura on 19<sup>th</sup> September, 2016.

**Prosecution case**

2. Silas M’Ikia stated he met Daniel Kuura on the morning of 19<sup>th</sup> September, 2016 and later heard screams and saw Kuura lying dead about 50 metres away surrounded by a crowd. Joel Thurania stated that on 19<sup>th</sup> September, 2016 at about 10.00 am, he was 30 metres away when he saw Accused attack Kuura with a panga leaving him for dead. It was his evidence that Accused was disarmed by the chief. Joshua Ngoluo Kuura did not know how his father Kuura met his death. Kailemia Henry only received information that Kuura had been killed.
3. Baariu Isaac, chief Njia location arrived at the scene of crime to find Kuura lying dead with his head chopped off. He stated he arrested accused who was unarmed from amongst the crowd at the scene and handed him over to the police. Police who visited the scene found Kuura’s body burned beyond recognition. They collected ashes and took photographs of the scene.

**Defence case**

4. In his sworn defence, Accused stated that Kuura was his paternal uncle. He stated he heard shouts and went to a public road near their home where he found his uncle lying dead surrounded by a large



crowd. The chief found him at the scene, arrested and escorted him to the police station where he was subsequently charged with an offence that he said he knows nothing about.

### **Analysis and Determination**

5. I have considered the evidence for the prosecution and for the defence. At the trial, the burden is always on the prosecution to prove that Accused was a significant contributing factor of the deceased's death and an accused person assumes no burden to prove his innocence.
6. In *Republic v Andrew Muecha Omwenga*, Maraga J (as he then was) considered the provisions of section 203 of the *Penal Code* and expressed himself as follows with respect to what the prosecution must prove to establish the offence of murder:

“It is clear from this definition that for an accused person to be convicted of murder, it must be proved that he caused the death of the deceased with malice aforethought by an unlawful act or omission. There are therefore three ingredients of murder which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the accused had the malice aforethought.”

7. The degree of proof in criminal cases was properly established in the classicus English case of *Woolmington v DPP* 1935 A C 462. Similarly, in *Bakare v State* 1985 2NWL R, Lord Oputa of the Supreme Court of Nigeria adopted the principle as follows at page 465: -

“Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption, the evidence of the prosecution must prove beyond reasonable doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure, including the administration of criminal justice. Proof beyond reasonable doubt means just what it says it does not admit of plausible possibilities but does admit of a high degree of cogency consistent with an equally high degree of probability”.

### **The death of the Kirimi**

8. That Kuura was killed and his body burned beyond recognition was proved by the prosecution witnesses and photographs of the scene which showed that the body was reduced to ashes.  
Proof that Accused persons committed the unlawful act which caused the death of the Kirimi
9. In order to establish the accused's culpability, the prosecution relied on the evidence by Joel Thurairia who stated that he saw Accused attack Kuura with a panga leaving him for dead. The chief whom the witness stated had disarmed Accused denied that Accused was armed at the time of his arrest. Accused and his two witnesses stated that he arrived at the scene long after Kuura was killed.
10. I have considered the uncorroborated evidence of Joel Thurairia who was the sole witness that implicated Accused. It is trite that a conviction on uncorroborated evidence may be had if the court or jury, as the case may be, is satisfied after duly warning itself of the dangers of convicting on uncorroborated evidence, the truth of the complainant's evidence. (See *R v Cherop arap Kinei & Another* (1936) 3 EACA 124).
11. Accused's evidence that he arrived at the scene long after Kuura was killed was corroborated by his two witnesses. Additionally, the chief that Joel Thurairia alleged had disarmed Accused of the panga used in the murder denied that Accused was armed at the time of his arrest.



12. In *Elizabeth Waitibiegeni Gatimu v Republic* [2015] eKLR, Mativo, J (as he then was) stated that:

“To my mind the rule that the prosecution may obtain a criminal conviction only when the evidence proves the defendant’s guilt beyond reasonable doubt is basic to our law. It is necessary that guilt should not only be rational inference but also it should be the only rational inference that could be drawn from the evidence offered taking into account the defence offered if any. If there is any reasonable possibility consistent with innocence, it is the duty of the court to find the defendant not guilty...Having considered the circumstances of this case, the prosecution evidence and the defence offered by the appellant, I am not persuaded that the conviction was justifiable and that this is a case where the accused ought to have been given the benefit of doubt. To give an accused person the benefit of doubt in a criminal case, it is not necessary that there should be many circumstances creating the doubt(s). A single circumstance creating reasonable doubt in a prudent mind about the guilt of an accused is sufficient. The accused is entitled to the benefit of doubt not a matter of grace and concession, but as a matter of right. An accused person is the most favourite child of the law and every benefit of doubt goes to him regardless of the fact whether he has taken such a plea. Reasonable doubt is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence leaves the mind of the court in that condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge.”

13. In *Elizabeth Waitibiegeni Gatimu v Republic* [2015] eKLR, Mativo, J (as he then was) stated that:

“To my mind the rule that the prosecution may obtain a criminal conviction only when the evidence proves the defendant’s guilt beyond reasonable doubt is basic to our law. It is necessary that guilt should not only be rational inference but also it should be the only rational inference that could be drawn from the evidence offered taking into account the defence offered if any. If there is any reasonable possibility consistent with innocence, it is the duty of the court to find the defendant not guilty...Having considered the circumstances of this case, the prosecution evidence and the defence offered by the appellant, I am not persuaded that the conviction was justifiable and that this is a case where the accused ought to have been given the benefit of doubt. To give an accused person the benefit of doubt in a criminal case, it is not necessary that there should be many circumstances creating the doubt(s). A single circumstance creating reasonable doubt in a prudent mind about the guilt of an accused is sufficient. The accused is entitled to the benefit of doubt not a matter of grace and concession, but as a matter of right. An accused person is the most favourite child of the law and every benefit of doubt goes to him regardless of the fact whether he has taken such a plea. Reasonable doubt is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence leaves the mind of the court in that condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge.”

14. From the totality of the evidence before the court, I find that the defence case casts a reasonable doubt as to the truthfulness of Joel Thurairara’s evidence that Accused killed Kuura and that doubt goes to the benefit of the Accused.



**Malice aforethought**

15. There being no evidence that Accused committed the act that led to the death of Kuura, it would be an exercise in futility to delve into the issue of malice aforethought.
16. Under the provisions of Section 322 (1) of the *Criminal Procedure Code*, Accused is found not guilty. He shall be set at liberty unless otherwise lawfully held.

**DELIVERED IN MERU THIS 30<sup>th</sup> DAY OF May 2024.**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

Accused - Present

For Accused - Ms. Oteko Advocate

For the DPP - Ms. Rotich (PC -1)

Page 3 of 8

