

KENYA / JUDGMENT

# Republic v Njuki [2026] KEHC 13540 (KLR)

**[2026] KEHC 13540 (KLR)**

COURT

High Court

BEFORE

EM Muriithi

CASE / FILE NUMBER

Criminal Case 16 of 2018

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**REPUBLIC OF KENYA****IN THE HIGH COURT KENYA AT KERUGOYA****CRIMINAL CASE NO. 16 OF 2018****REPUBLIC .....PROSECUTOR****VERSUS****JOHN WARAGA NJUKI.....ACCUSED****RULING ON CASE TO ANSWER**

1. The accused is charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code with particulars that he “on the night of 15th and 16th of November 2018 at Kabonge village in Kirinyaga West district within Kirinyaga County unlawfully murdered Stephen Warui Njagi.”\*
2. The court has considered the evidence presented by the six (6) prosecution witnesses and the submissions filed by the accused dated 2/6/2026.
3. The court has considered the evidence against the requirement to prove the case beyond reasonable doubt in terms of the elements of the offence of murder contrary to section 203 as read with 204 of the Penal Code.
4. At this stage, the court is required to consider whether the prosecution evidence has established a *\*prima facie\** case, which as held in *\*Ramanlal T. Bhatt v. R\*\**(1957) EA 332, 335\* is “one on which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”\*

5. The court is under a duty, where it considers that a prima facie case has not been established, to acquit the accused. See *\*Murimi v R\** (1967) EA 542 and *\*Wachira v R\** (1975) EA 262. In such instance, the court is required to give full reasons for the decision unlike where it finds that a prima facie case has been established as held in *[\*Kibera Karimi v R\*]* (<https://new.kenyalaw.org/akn/ke/judgment/kehcc/1979/19>) (1979) KLR 36 (Trevelyan & Todd JJ), so as not to prejudice the fair trial of the case by giving the impression that the court has already made up its mind without hearing the defence. See also *[\*Festo Wandera Mukando v R\*]* (<https://new.kenyalaw.org/akn/ke/judgment/kehcc/1980/3>) (1976 – 80) KLR 1626 and *[\*Antony Njue Njeru v R\*]* (<https://new.kenyalaw.org/akn/ke/judgment/keca/2006/339>), Nairobi CA Cr Appeal No. 77 of 2006 and the *[\*Kenya Judiciary Criminal Procedure Benchbook\*]* (<http://kenyalaw.org/kl/fileadmin/pdfdownloads/JudiciaryCriminalProcedureBenchBook.pdf>), 2018 at 99-100.
6. In this case, upon consideration of the prosecution evidence, the court does not find, having regard to the ingredients of the offence of murder, that the offence has been established, and the court will consequently give full reasons.

### The Evidence

1. The Prosecution called 6 witnesses, in support of its case.
2. **PW1 Beatrice Wanja Ndege**, testified that, “I am from Kabonge. I am a farmer. On 16th November, 2018 I woke up as usual at about 6.00 a.m. I was preparing to go pick tea when I felt tired so I waited until 7.00 a.m. I left the house at 7.00 a.m and went to pick tea. On the way I met a lady called Wacholo. She was carrying a Mutungi and running. I asked why she was running she said someone had been killed near the river. I did not go to pick tea. I went to the scene on a path and saw the body in the tea bushes. The person was lying face up, swollen face, he was wearing a half trouser, I saw he had been cut. Shown photograph marked MFI 1A, photos of deceased facing upwards, trouser half down. Shows photo MFI 1B face of deceased shown swollen His privates had been cut. Photo MFI 1C with testicles missing. I recognised the body as Warui Njagi. He was my neighbour. I moved to the roadside and said this was Warui Njagi. On the far side of road there were 2 caps. A red one and another cap. The red one I said belonged to Warui Njagi. The other one a military one, belonged to John Njuki. I knew John Njuki. He is my cousin and is the one in the dock. The two were friends with the deceased but not fast friends. I used to see John Njuki with the military cap and military shorts. Which he wore. Shown Red cap MFI 2 belonging to deceased. Shown military cap MFI 3 this is the one John Njuki wore. Accused is my cousin. Once I went to pick tea at Tabitha Wawira Njuki’s farm on 1st October, 2018 at about 7.00 a.m. John Njuki came and we started talking. He was not coming to pick tea but to check some tea he had planted. He told me about Macadamia then he said there someone he would kill. He told me it is John Njuki. He said he gave Warui grass to cut and sell but Warui never brought him any share of money. I asked why and Warui is a good man when I went home I told my mother Faith Njeri. She said she would tell Warui’s family. I told her maybe he was joking she should not take it too seriously. I knew that it was accused who had killed

Warui. When I saw deceased's body I got scared. I went home and said nothing. Police came the same day in the evening and picked Gerald and John Ndege, my brother. They were taken to Baricho police station. On 16th November, 2018 I told my mother why the police have picked the wrong persons. I told her that the military cap belonged to accused another had told me how he would kill deceased. My mother went to Warui's family and told them what I had said. She told me the following day that we should not keep silent but should report. We then went to Baricho police station. My brother was still within police station at this time. The police then went and arrested John Njuki and took him to Baricho where he was held with the other. His father and my father are brothers. I have known him for a long time. His father is deceased so is my father. His mother is alive. We have no disagreements between our families and his family. I wrote my statement at Baricho police station.”\*

3. On cross examination, she stated that, “I had seen the accused before the incident. I had seen him on 1st October, 2018 when I was at the tea. The incident was on 16th November, 2018. I had last seen accused on 1st October, 2018. That was the time we spoke. Our house and their house is in one area. Between 1st October and the incident I did not see accused. I did not know what he was doing. My brothers Gerald Mwithi and John Mwangi were not deceased's friends. John is a cousin but Gerald is a neighbour. They were friends with deceased. Even today Gerald and John were arrested because they came from casual work at night. The accused was not at that job. They were arrested because the military cap was known to belong to accused. People said they had seen Gerald wearing the cap (military). I had not seen him wearing that cap. I can say specifically who it was that said the military cap was for Gerald. He was arrested for that reason. As for John he worked with accused. They were together that night. When Gerald was arrested he said it was not him who murdered. He said he was with John Ndege. I don't know why John Ndege and Gerard were not charged. Gerald after he was released stayed home for a while, but then left the village to Ngariasha. They re-located. The last time I saw accused. I saw accused with military cap and shorts on 1st October, 2018 in the evening. That was the last time I saw accused with military clothes. Accused is a farmer and grows tea. On the day of the incident the accused was at his home. Accused was not there when the incident occurred. He has been wearing that outfit. I don't know if accused was at scene. When I told my mother what accused had told me. After my mother was arrested that is when I told my mother what accused had done.”\*
4. In re-examination, she stated that, “I never saw Gerald with a military cap. I had only seen accused. On the night of the incident I told my mother. When I told my mother she went to tell the Warui's family. Gerald relocated from the area. It was in 2018/2019 when they relocated. Gerald had built along the road so because of the road they relocated to another place in Ngariasha.”\*
5. **PW2 Njagi Gakuru**, testified that, “I am from Mukure Location. I am a farmer. On 16th November, 2018 at about 6.00 a.m and 7.00 a.m. I heard noises of people outside saying someone had been killed in the tea farm. So me and my children went to see. My wife, Nancy Wambui was also there. My children who were there were: John Mwai Njagi and

Fredrick Maina. On reaching I saw a crowd of people who were looking at the scene in the tea. I saw a body of a person just outside the tea bushes. The head was looking upwards. The body had clothes on, I saw the body looked lifeless. It was my son. Shown photographs. Shown MFI 1A photo. That is my son (deceased) the police came and took photos and also took away the body. I went close at the body. Shown MFI 1B. This is how his face was. The body was brought to Kerugoya Mortuary. At the scene there were also 2 caps. The first one was my son's it was red. Shown MFI 2. That is my son's cap. The other cap looked like the one worn by military. Shown MFI 3 that is the other cap. On the day before the incident. The second cap was John Njuki's (accused) I know because on that day we went to deceased's home and he had such a cap. He used to have such a cap. We went to deceased's house and he did not have the hat on. Since that day he has not been having the cap. We asked accused where his cap was and he said he did not know. He was in a state of anxiety. I have known accused for a long time. Since he was a child. He does not live far from where we were. The deceased and accused had been good friends. They used to visit one another. I last saw my son on 15th in the morning we had gone together but we parted ways. The last time I saw accused before he was arrested was about a week before. He worked as a tea picker. Accused and deceased used to do casual jobs together.”\*

6. On cross examination, he stated that, “On 16th the people I heard talking. There were many people on the material day. I went to the scene. The scene was about 200 meters away. I saw (Peter) I did not know at first who had the cap military. The police came to scene. I can't recall the time of this. Where the caps were they were close. The cap for accused I had never seen it in our village with anyone else. We went to accused's house after seeing the military cap which I knew. By this time the police had not gone to accused's house. The accused's home was not far away, the accused appeared anxious. I have known accused for long. I know accused parents. Father Njuki mother is Nyawira. I don't know how many children accused's parents had. Deceased and John Njuki worked together. The two did casual jobs together.”\*
7. In re- examination, he stated that, “The police were there when we went to Njuki's place. The body was a bit of a distance from the caps. The caps were about 10 meters away from the body. It is not far.”\*
8. **PW3 John Mwai Njagi** testified that, “I am from Mukure Location. I am a farmer. On 26th October, 2018 I went to Kerugoya Mortuary. My brother Steven Warui had been killed. We went to the doctor together with a police man. I saw the deceased's body. It had been removed the private parts.”\*
9. On cross examination, he stated that, “I am brother to Steven Warui Njagi. We are ten siblings. 5 boys and 5 girls. I am the first born of Nancy Wambui Njagi. Deceased was in the middle. I heard of deceased death on the evening of 11th November, 2018 we went to mortuary on 26th November, we went to the mortuary. I noticed his privates were cut off.”\*

10. In re - examination, he stated that, \**"I came to know of deceased's death on the same day, but I visited mortuary on 26th November, 2024. I noted that deceased's body was missing private parts."*\*
11. **PW4 Peter Murithi Itunga**, testified that, \**"I am an Assistant Chief Mukure sub-location, Kirinyaga sub-County. I have been assistant chief for last 8 years from 2017. On 16th November, 2018, I received a call who owns a shamba at 7.00 a.m. He told me that as he was going to his tea farm he had found a body of the deceased. I went to the scene immediately. I got there after 15 minutes as my home is not far from the scene. I found many people had gone to the scene. I saw the body. It was lying with face upwards. He was inside a tea bushes. He had been killed and his private parts had been removed. His trousers had been removed. [MFI 1a. picture of deceased with face up]. It appeared that there was strain at the neck to suggest that as the acts were done to him, he was held neck and he was struggling. [Pictures MFI 1A - whole body lying up. B. Face swollen c. chopped off manhood – testicles. I did not recognise him when I saw him. I called the villagers who came and positively identified him. There were two hats at the scene. One was red and other was military type. [MFI 3 cap with military colours] I could not tell where the caps had come from but the people said the deceased had been seen with red cap and the military cap was said to belong to a young man from the area. They said it belonged to one Gerald. The people who were at the scene belonged to the area. The deceased also came to area and the person whose cap was said to belong to also came from the area. Elder Nyamu Joseph Maina came after I called him to come and see whether he could identify the deceased person. The elder Maina identified the deceased as Warui. I came to know later that Warui was Stephen Warui Njagi. I called the Chief Daniel Mugo Gakure and informed him about the matter and requested him to call OCS Baricho Police Station. I know he called immediately and we were told to wait as they had called from officers of scene of crime Embu so that they could come together. They came at about 1.00 p.m. I heard that there was a suspect from the area because of the military cap. I did not know the suspect but I knew the deceased. I had previously been asked by Warui's father to articulate over an issue involving a brother to deceased. On 17th November, 2018 I was called to Baricho Police Station to record my statement."*\*
12. On cross examination, he stated that, \**"I am Assistant Chief Mukuru. I was confirmed to be area Assistant Chief. I have not brought document of the confirmation. Assistant Chief works to maintain law and order and express government policy. I do not know the statue that gives chiefs authority. Murimi called me at 7.00 a.m. Peterson Githinji Murimi is a teacher. I know him before the incident. I knew him even before I became chief we go to the same church. He called me by Number 0724233508. He told me that he had gone to his shamba his homestead land. I do not know the size of the shamba. As he was going at his shamba he found the deceased's body. I went to the scene immediately. I arrived 15 minutes later and I live nearby and I had a motor bike. At the scene there were many people. It is a village and there were many things. I found Peterson Githinji. The body was inside the tea plantation. I know the deceased but I did not identify and recognise him at that time. I called the village elder to come and identify the person. I am not the one who took the*

photos. I saw two caps at the scene. I am not the one who took the photos. The caps were about 5 meters from the body. There were threats on the ground and I found people. I did not know whether it was they people the people were on the roadside. They had not entered to the plantation. I did not know who owned the two caps. [Statement that cap belonged to Gerald Muriithi Wangithi] it is the people who alleged that the military cap belonged to Gerald Muriithi. I know the accused. I have not heard that he has committed other offences. [John Mugo Ndege was arrested] I do not know where the matter reached after I handed over to the authorities. It is the chief who called the OCS.”\*

13. In re-examination, he stated that, “I am on oath. I am the Assistant Chief Mukure Sub-location. I got a call from Peterson Githinji Muriithi the teacher. The number 0724233508 is the number that called me. I got it from my phone. I had saved it in my phone. The people at the scene were at the road. The body was at the shamba. The people were informed of the body which was in the shamba. 2 caps were 5 meters from the body. [From witness box to the Accused dock] the caps were identified by the villagers. John Mwangi Ndege was arrested. I do not know why he is not before the court. I have told the court what I know.”\*
14. **PW5 Cpl. Joshua Kipruto Cherotich**, DCIO Kirinyaga West, Baricho, produced the photographs of the crime scene, the original handwritten statement dated 16/11/2018 and signed by Sgt. Otieno and the military and red caps as exhibits. He testified that, “I appear on behalf of Sergeant Otieno who was transferred to Kisumu Central and later retired from service. Before he went on transfer he handed me police file no. 222/221/2018. The file had statement of witnesses and exhibits. I took over the file. I confirm Sergeant was my workmate. He was the investigating officer. I know the officer very well and I am able to distinguish his handwriting and signature. He is the one who conducted investigations. I have tried to reach him but it was unsuccessful. He is retired officer.”\*
15. On cross examination, he stated that, “I am not the one who investigated the matter. I am of the rank of Corporal. I am not a Sergeant. It is the DCI who investigates. There is no specific rank of officer to investigate. I read the report by the sergeant and the covering report. What made accused to be charged? It was according to statements of witnesses. DNA Report - There were finding of blood samples on the exhibits. The findings were that there were no blood stains. That is why I did not call the doctor. Military cap and red caps which belonged to the accused? It is military cap. I have no evidence that the cap belonged to the accused. The caps were recovered from the crime scene. I did not go to the scene. I do not know whether they were neighbours.”\*
16. In re-examination, he stated that, “There was search for DNA comparisons of samples from the accused and from the caps. I do not know whether the military cap had been mentioned by any witness in this case.”\*
17. **PW6 Dr. Ndirangu Karomu** stated that the cause was the death of the deceased was hemorrhage bleeding secondary to a cut on the scrotum.

## Submissions

1. The prosecution did not file any submissions.
2. The accused urges that when a case is based on circumstantial evidence, the circumstances leading to the offence one is charged of ought to be so intertwined to warrant an explanation, and cites **\*Sawe v Republic KECA [2003] 182 (KLR) and Nzivo v Republic [2005] KECA 295 (KLR)\***. He submits that it was never proved through testimonial evidence why the accused would want to kill one Stephen Warui Njagi and the court is left to speculate. He faults the prosecution for failing to either produce the murder weapon or lead any other evidence to connect him to the offence, and cites **\*Republic v Silas Magongo Onzere Alias Fredrick Namema [2017] eKLR, Republic v Tubere s/o Ochen [1945] 12 EACA 63, Republic v Albert Tirimba Ogata [2014] KEHC 4084 (KLR), Mwangi v Republic [2004] KECA 104 (KLR) and James Maina Ndombi v Republic [2005] KEHC 995 (KLR)\***. He urges that the case has not been proved beyond reasonable doubt, and prays to be acquitted.

## Analysis and Determination

1. The prosecution has the burden of proof against the accused to present sufficient evidence to support each of the elements of the offence of murder. The ingredients of the offence of murder contrary to section 203 as read with 204 of the [Penal Code](<https://new.kenyalaw.org/akn/ke/act/1930/10/eng%402023-12-11>), which is what the prosecution is required to prove in a murder trial, have been well settled as; 1) The death of the deceased occurred, 2) The death was through unlawful acts or omission of the accused. And 3) The accused person had malice aforethought. See [**\*Republic v Nyambura and 4 Others\***](<https://new.kenyalaw.org/akn/ke/judgment/kehc/2001/826>) (2001) KLR 355.
2. Having considered the testimonies of the six prosecution witnesses, the question is whether the evidence tendered establishes a prima facie case against the accused, or in other words whether the accused has a case to answer for the offence of murder contrary to section 203 of the [Penal Code](<https://new.kenyalaw.org/akn/ke/act/1930/10/eng%402023-12-11>).
3. The death of the deceased is not disputed. PW6 opined that the cause of death was hemorrhage bleeding due to a cut on the scrotum.
4. The bone of contention is whether it was the accused who committed the unlawful act which caused the said death of the deceased.
5. There is concession that the case was purely circumstantial as there was no eye witness to the murder. The two crucial pieces of evidence in this case are the military cap allegedly owned by the accused and an alleged conversation between the accused and PW1 1½ months prior to the murder, where the accused had explicitly expressed his intention to kill the deceased.

6. It is trite that for an inference of guilt to be drawn from circumstantial evidence as a basis of a conviction, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. (See *\*R v Kipkering Arap Koskei & Anor (1949) 16 EACA 135*)\*, because mere suspicion, no matter how strong, cannot found a basis for conviction. (See *Sawe v R* \*[2003] KLR 364\*).
7. The burden of proving the facts which justify the drawing of the inference of guilt based on circumstantial evidence is always on the prosecution, which must establish its case beyond reasonable doubt. (See *\*Wambua & 3 Others v R* [2008] KLR 142 [C.A])\*\*.\*
8. PW1 testified that, **\*“I used to see John Njuki with the military cap and military shorts. Which he wore. Shown Red cap MFI 2 belonging to deceased. Shown military cap MFI 3 this is the one John Njuki wore. Accused is my cousin. Once I went to pick tea at Tabitha Wawira Njuki’s farm on 1st October, 2018 at about 7.00a.m. John Njuki came and we started talking. He was not coming to pick tea but to check some tea he had planted. He told me about Macadamia then he said there someone he would kill. He told me it is John Njuki. He said he gave Warui grass to cut and sell but Warui never brought him any share of money. I asked why and Warui is a good man when I went home I told my mother Faith Njeri. She said she would tell Warui’s family. I told her maybe he was joking she should not take it too seriously. I knew that it was accused who had killed Warui.”\***On cross examination, she stated that, **\*“Between 1st October and the incident I did not see accused. I did not know what he was doing. My brothers Gerald Mwithi and John Mwangi were not deceased’s friends. People said they had seen Gerald wearing the cap (military). After my mother was arrested that is when I told my mother what accused had done.”\***
9. PW2, the father of the deceased testified that, **\*“The second cap was John Njuki’s (accused) I know because on that day we went to deceased’s home and he had such a cap. He used to have such a cap. We went to deceased’s house and he did not have the hat on. Since that day he has not been having the cap. We asked accused where his cap was and he said he did not know. He was in a state of anxiety.”\*** On cross examination, he stated that, **\*“I saw (Peter) I did not know at first who had the cap military.”\*****\*\*We went to accused’s house after seeing the military cap which I knew.”\***
10. PW4, the Assistant Chief Mukure sub-location, testified that, **\*“I could not tell where the caps had come from a but the people said the deceased had been seen with red cap and the military cap was said to belong to a young man from the area. They said it belonged to one Gerald.”\***
11. PW5 Cpl. Joshua Kipruto Cherotich took over the file from the initial investigating officer Sergeant Otieno, who has since retired. In response to the question whether the military cap belonged to the accused, he stated that, **\*“I have no evidence that the cap belonged to the accused. The caps were recovered from the crime scene. I did not go to the scene. I do not know whether they were neighbours.”\***

12. According to PW5, the military cap, upon being subjected to DNA analysis, was found not to contain any blood stains. Yet, remarkably, no such DNA report was produced as an exhibit, thereby depriving the court of the opportunity to independently evaluate its contents and gauge the accuracy of PW5's assertion.
13. Similarly, the evidence of PW1 and PW2 that the military cap allegedly belonged to the accused, in the absence of definitive DNA evidence linking it to him, could not establish ownership or possession to the required standard. The evidence of PW1 and PW4 that the same military cap had allegedly been seen worn by Gerald further weakened the prosecution's case. The unresolved questions surrounding the ownership of the military cap and the unexplained involvement of Gerald broke the chain of circumstantial evidence, thereby rendering it unsafe to found a conviction.
14. This court is satisfied that the inculpatory facts are compatible with the innocence of the accused, and capable of explanation upon other reasonable hypothesis than that of his guilt.

**\*Accused had malice aforethought\***

1. While the conversation between the accused and PW1 on 1/10/2018, approximately 1½ months prior to the murder, may arguably be a possible motive for the offence, it could not, standing alone, constitute direct proof of an unrelenting intention to kill, particularly without corroborative physical or forensic evidence placing the accused at the scene. Significantly, the murder weapon was neither recovered nor produced as an exhibit.
2. There was simply a case of lack of evidence to show that the accused, with malice aforethought as defined in section 206 of the [Penal Code](<https://new.kenyalaw.org/akn/ke/act/1930/10/eng%402023-12-11>), assaulted the deceased leading to his death. To require the accused to testify by a finding of case to answer would be to require the accused to supply information as to what had transpired leading to his alleged killing of the deceased, and this would be tantamount to requiring him to prove his innocence, by, say, showing that he was acting on provocation or in self-defence.
3. Having regard to the paucity of evidence led, the glaring evidentiary gaps in the testimonies of crucial witnesses and the want of DNA evidence, there is no basis upon which the accused may properly be called upon to answer the charge.

**ORDERS**

1. Accordingly, for the reasons set out above, in accordance with section 306 (1) of the [Criminal Procedure Code](<https://new.kenyalaw.org/akn/ke/act/1930/11>), having found that there is no evidence that the accused committed the offence, the Court shall record a finding of not guilty, and acquit the accused of murder contrary to section 203 as read with 204 of the [Penal Code](<https://new.kenyalaw.org/akn/ke/act/1930/10/eng%402023-12-11>).

2. The Court, therefore, directs that the accused's surety for bail pending trial is discharged and the security may be returned to the depositor.
3. File closed.

\*Order accordingly.\*

DATED AND DELIVERED THIS 17TH DAY OF SEPTEMBER 2026.

EDWARD M. MURIITHI

JUDGE

**Appearances:**

Mr. Mwangi for DPP.

Mr. Asimwe for the accused.

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