



**Republic v Kamau (Criminal Case 12 of 2018)  
[2023] KEHC 3628 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3628 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CRIMINAL CASE 12 OF 2018  
CM KARIUKI, J  
APRIL 27, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JOEL GACHAU KAMAU ..... ACCUSED**

**JUDGMENT**

1. Joel Gachau Kamau, the Accused herein, was charged with two counts of murder contrary to Section 203 as Read with Section 204 of the Penal Code.

Count I: Murder contrary to Section 203 as read with Section 204 of the Penal Code.

2. The particulars of the offense are that on the 28<sup>th</sup> day of June 2018 at Kieni Village in Kiambaga Location in Nyandarua Central Sub-County within Nyandarua County, the Accused murdered Bright Njoki Kamau, the 1st Deceased herein.

Count II: Murder contrary to Section 203 as read with Section 204 of the Penal Code

3. The particulars of the offense are that on the 28<sup>th</sup> day of June 2018 at Kieni Village in Kiambaga Location in Nyandarua Central Sub-County within Nyandarua County, the Accused murdered Elishiba Wangui Kamau, the 2nd Deceased herein.
4. The prosecution's brief case is that the Accused persons murdered the Deceased persons herein, namely his niece and his mother after he had an altercation with his mother over claims that she was bewitching him.
5. PW1, Geoffrey Njihia Kamau testified that he was in his office at Kieni Primary School, where he taught, when the school cook, shaken, came and told him that somebody was asking about a child. She asked him to go out and talk to him. He proceeded to speak to the person who was unknown to him.



- The person said that he wanted their Mathenge. He had blood on his shirt and head and was bleeding from the neck. He wore a jacket and a trouser but could not recall its colour. PW1 asked him what was wrong with his neck, and he responded that he should ignore that. He also told him that the knife was not sharp and that he wanted Mathenge to finish it for him.
6. It was PW1's testimony that he understood what he meant was to finish him, but in Kikuyu, which the man was speaking in, it was as if to finish for him. He said that even the others he had finished for them. By then, other teachers had arrived, namely Mr. Mwangi, Mr. Gachau, and Mr. Nganga.
  7. PW1 asserted that he asked him who the others were, and he said that it was the mother and the other child. He asked what he meant, and he said that all of them were going, and even he was going. PW1 told him that he would not give him the child and that he should leave. That he did not see him with any weapon. The man then said that if they did not give him the child, he would get it before heading towards the gate, where they escorted him outside the gate. He stated that some teachers followed the man and that he entered a church and passed through people's farms.
  8. He testified that some teachers received a call that the man had killed a child and the mother. He then went to the A.P. Camp at the Chief's Camp, and they said that they had heard screams and went to where they were emanating from and found the boy who had come to school had entered the water. He said that he later found the man at the Chief's Office, and the A.Ps told him that they had removed him and taken him to the Chief's Camp. He identified the man as the same one that had come to school and was the Accused in the dock.
  9. On cross-examination, PW1 stated that the man said 'nindamorikeria,' which is Kikuyu and means 'I have finished them.' That he could not tell exactly what he meant, he also stated that he had interacted with mentally disturbed people, but the Accused did not look mad. He looked like a normal person. He said he was on a journey with members of the family.
  10. He asserted that the Accused said he had finished 'mukuru,' which could mean mother but, in direct translation, also means an elderly person. He also asserted that the injury on the neck was a cut that was bleeding, but it must have been superficial. The Accused did not complain of pain and acted normal as if he was not in pain. PW1 also averred that the man asked for his brother and said he was leaving the world.
  11. PW2, Rufus Macharia Gikonyo, a Pastor at Full Gospel Churches of Kenya, gave sworn testimony that on the material day at about 6 am, he was still asleep when he heard noises from his immediate neighbours. He was called by Ng'anga, who told him that there were noises from the neighbours and that he should go and see what was happening. As he was leaving, he met someone who started talking to him. He knew the persons as Joel Gacheru, the Accused herein.
  12. The Accused told him that "pastor 'nimewamalizia'" he said in Kikuyu. He got scared when he looked at him because he was bleeding from the neck. He had a fresh injury on the neck at the joint. PW2 went to the home, where he found a lady lying down, and there was a pool of blood. There was also a child cut and in a pool of blood. He closed the door and saw the Accused heading toward the school. He testified that he knew the lady who was lying in the pool of blood as the Accused's mother and the child as a child he used to see playing outside.
  13. He explained that the Kikuyu word the Accused told him meant that the Accused had killed them. The police came from Ol Kalou and took the bodies. He also identified the Accused in the dock.
  14. In cross-examination, PW2 stated that he knew the Accused as his father had told him his name when he reported and that the Accused used to pass by and greet him. He said the incident occurred at about 6 am because he was in bed.



15. He reiterated that the Accused had an injury on the neck that looked like a cut and was bleeding a lot, but he did not know who cut him. Further, he could not tell if the Accused was mentally disturbed. Finally, he said that in Kikuyu, the word 'nindamarikiria' has different meanings and depends on the context in which it is used.
16. He stated that he was the first person at the crime scene, and when he entered, he saw a panga at the door. He reiterated that the Accused told him the words 'nindamarikiria' and that their mother had sold them to Satan.
17. PW2 was later recalled to identify the panga he saw at the scene of the crime. He stated that he saw the panga beside where the Deceased persons lay and that the handle made him recognize it. He said that he knew the Accused was the owner of the panga.
18. PW3 No. 242763 PC Thomas Bamyano, from Ol Kalou Police Station, stated that in 2018 he was stationed at Kyeni AP Post. On a fateful day, he was on duty with APC Samuel Muriithi when, at around 9 a.m., while in the office, he heard screams and went to check what was happening. He found a group of people chasing someone, running toward the AP post. They approached them, arrested the persons they were chasing, and took him to the office.
19. PW3 noted that the suspect had a cut on the throat. He stated that people were milling outside the office. They enquired what had happened, and the people said the suspect had killed a child and the mother. They then went to the scene and started their investigations. They learned that the Accused had killed his sister's child and critically injured his mother. He stated that the Accused had nothing in his hands when they arrested him and that his clothing and especially the front part was blood-stained.
20. On cross-examination, PW3 stated that he was with the Accused for a short moment, and he did not observe whether he was mentally disturbed and that the Accused never said a word to them. Further, he had a deep cut on the throat but did not know who cut him.
21. He asserted that he did not enter the house that was the crime scene as only DCIO officers entered. However, he also confirmed that they found many people at the scene but not inside the house.
22. PW4 Tutus Ngulungu, stationed at Nakuru Provincial General Hospital as a pathologist, produced the 2nd Deceased's post-mortem report as P. Exhibit 2a. He stated that he did the post-mortem at Nakuru PGH on 4/7/2018 and that Stanley Kamau and Joseph Mwangi identified the body.
23. Upon examination, he found that the body was of a female, African, 1.77cm, and the body had been embalmed. It had multiple incision wounds on the head, back, and side slash wounds 150 mm. There was also an incision on the left wrist of 50mm. There were defaced injuries on the left knee 50mm. He noted slash wounds on the scalp and skull involving the brain. The brain showed laceration.
24. He concluded that there was a head injury involving multiple slash wounds to the head, injuries that were consistent with a fatal assault.
25. PW5 Patrick Richard Kariuki produced the 1st Deceased's post-mortem report as P. Exhibit 2b. He testified that the 1st Deceased had severe head injuries and thought that the cause of death was multiple deep-cut wounds to the head.
26. PW6, Elizabeth W Onyiengo, a Government Analyst, confirmed that on 10/7/2018, she analyzed the samples received from DCI Nyandarua. She stated they received a panga in a dark envelope, a dark brown jacket, and blood samples on 19/12/2018. Accordingly, they examined them via DNA profiling and compiled a report she produced as P. Exhibit 3. PW6 asserted that the panga was stained with



- human blood, and the blood matched the DNA profile of the two deceased persons and the Accused persons.
27. PW7, No.95390 PC Nyana Buluma testified on behalf of the former investigating officer, PC Julius Musau, whom she had taken over after his retirement. She asserted that she received the file to familiarize herself with the statements, and exhibits, i.e., the panga and brown jacket and the government analyst report.
  28. She testified that the Accused was said to have attacked his mother and niece, who succumbed to death. Public members tried to lynch the Accused, and they cut his neck, but police rescued him from Kyeni AP Camp. He was taken to JM Hospital for treatment and later to Ol Kalou Police Station.
  29. She produced the former I.O.'s statement as P. Exhibit 8, the panga as P Exhibit No. 7, the jacket (dark brown) as P Exhibit No. 6, and the exhibit memo forms of blood samples of the Deceased persons and Accused as P. Exhibit 4 and 5.
  30. PW8, No. 2008075457 PC Samuel Murigi, testified that he was at Kieni AP Post, Ol Kalou, Nyandarua, on 28/6/2018 with PC Thomas when they heard people shouting and chasing the Accused. The people said that he had killed his mother and a child. They took him to the station for safety. He had a cut on his neck, and the Accused said he had cut himself using a panga. The officers called their supervisors for assistance, and officers from DCI Ol Kalou Office came and took him. They proceeded to the scene with DCI officers and found a panga at the scene, which they believed was a murder weapon, and the victims. He identified the panga he saw at the scene as P Exhibit No. 7.
  31. On cross-examination, PW8 stated that he could not say that the Accused was mentally disturbed. That the Accused wanted to commit suicide and had said that he cut himself to kill himself. He pleaded with them to kill him with a gun and asked for a sharp knife to kill himself or take his life.
  32. The Accused testified under oath in his defense. DW1, Joel Gachau Kamau, denied the charges levelled against him. However, he stated that the last time he left home before his arrest, he woke up and had a quarrel with his wife, who accused him of drug abuse. She also accused him of taking her chicken and throwing them into the latrine.
  33. He was then arrested, and his wife came to see him at the police station. She told him that he had killed somebody. He stated that he used to be a caretaker but had forgotten his employer's name. He said that he was told that he was acting in an abnormal way and that he had injuries on the neck. He asserted that he did not know what happened.
  34. The Accused averred that he told the psychiatrist that his mother and grandmother had a mental disorder. He stated that he knows that his mother is alive, although he was told that she is dead and that he does not know who killed the two victims herein. DW1 told the court that he was found to have been taking cannabis and other substances in Nairobi. He was trying to stop the abuse, but he was having nightmares, hallucinations, dreams of being chased at night, and strange things eating him.
  35. He asserted saying that his wife's statement to the police stated that he was a mad person. The statement was produced as D. Exhibit 1, and his mental assessment report as D Exhibit 2. He concluded by stating that he had no grudge against his mother and that they have a family problem of mental disorder.
  36. Upon cross-examination, the Accused reiterated that he had no problem with his mother and was mad at the time of the alleged incident. That he cannot remember how his mother and his niece died.
  37. The accused's Written Submissions were not filed by the time of writing this judgment.
  38. Respondent's Written Submissions were also Not filed by the time of writing this judgment.



39. Analysis and Determination
40. Having considered both the prosecution and defense cases and the evidence therein, this court is called upon to decide whether the Accused is guilty of the two counts of murder as charged. Section 203 of the Penal Code defines the offense of murder and requires proof of the following essential elements if the offence of murder is to be established: -
- i. Whether there is proof of the fact and cause of death of the Deceased persons;
  - ii. Whether the Accused caused the death of the Deceased persons, and if so;
  - iii. Whether the acts of the Accused, resulting in the Deceased's death, qualify as murder (intentional killing)
41. The ingredients necessary to prove murder were reiterated in the case of Anthony Ndegwa Ngari v R [2014] eKLR, where the Court of Appeal stated them as follows:
- i. That the death of the Deceased occurred;
  - ii. That the Accused committed the unlawful act; and
  - iii. That the Accused had malice aforethought.
42. Further, in *Abanga alias Onyango v R* Cr. App. No 32 of 1990, the Court of Appeal set out the conditions as follows:
- “It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Accused; (iii) 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.”
43. In this case, the first ingredient is not in doubt. The 2 Deceased persons are indeed dead. The same was confirmed by P. Exhibit 2a and 2b, i.e., the post-mortem reports produced by PW4 and PW5, respectively.
44. The second ingredient that the prosecution has to establish beyond a reasonable doubt is; whether the Accused committed the unlawful act that led to the Deceased' persons's death. It is clear from the prosecution's evidence that there was no eyewitness who saw the Accused killing the two Deceased persons. However, I find that the circumstantial evidence tendered through the prosecution's account establishes that no other coexisting circumstances could weaken or destroy the inference of guilt on the Accused's part. (See *Sawe v Republic* [2003] eKLR)
45. The Accused persons denied having killed his mother and niece; however, the prosecution entirely dislodged this assertion. PW2, who was the Deceased person's immediate neighbour, testified that he heard noises from his neighbour's house, and as he went to check on what was happening, he encountered the Accused persons who told him “pastor ‘nimewamalizia” in Kikuyu. He stated that the Accused was bleeding from the neck and appeared to be a fresh injury. PW2 then proceeded to the home, where he found a child and a lady lying in a pool of blood. He stated that he closed the door and saw the Accused heading to the school.



46. PW1 testified that when the Accused arrived at the school, he asked Mathenge, who I understand is either his brother and/or a family member, to finish for him. He stated that he had blood on his shirt and was bleeding from the neck. PW1 asserted that the Accused told him that he had also ‘finished for’ the others. He asked him who the others were, and the Accused responded that it was his mother and the other child. Pw1 indicated that he told the Accused that he was not going to give him the child, and he then proceeded to leave the school.
47. PW3 No. 242763 PC Thomas Bamyano, who was stationed at Kieni AP Post on a fateful day, stated that they arrested the Accused, who was being chased by a mob. The mob indicated that the Accused had killed his mother and a child. PW3 noted that the suspect had a cut on his throat. It was PW3’s testimony that they went to the scene and started their investigations. They learned that the Accused had killed his sister’s child and critically injured his mother, who later succumbed to her injuries in hospital.
48. PW8, No. 2008075457 PC Samuel Murigi corroborated PW3’s account; he testified that they were at Kieni AP Post, Ol Kalou, on 28/6/2018 with PC Thomas when they heard people shouting and chasing the Accused. The people said that he had killed his mother and a child. They took him to the station for safety. He had a cut on his neck, and the Accused said he had cut himself using a panga. The officers called their supervisors for assistance, and officers from DCI Ol Kalou Office came and took him. They proceeded to the scene with DCI officers and found a panga at the scene, which they believed was a murder weapon, and the victims. He identified the panga he saw at the scene as P Exhibit No. 7.
49. Moreover, through his statement, the former investigation officer confirmed that he collected the Accused from Kieni AP Post and was informed that members of the public had tried to attack him before officers rescued him from the AP Post. He stated that the Accused had a cut on his neck and blood on his clothes. That he was taken to the hospital and later arrested and charged with the offense of murder.
50. He stated that he proceeded to the scene of the crime, where they recovered the victims’ bodies lying in pools of blood. He also recovered a blood-stained panga which he kept as an exhibit as the weapon used to commit the crime. He later received information that the 1st Deceased had died on her way to the hospital, and the 2nd Deceased succumbed to her injuries the following day in the hospital. He stated that he later forwarded the exhibits he had collected, i.e., the panga, the Accused’s jacket, and blood samples from the Deceased’s persons, to the government chemist for forensic analysis.
51. The Court of Appeal in the case of *Ahamad Abolfathi Mohammed and Another v Republic* [2018] eKLR stated as follows: -

“However, it is a truism that the guilt of an Accused persons can be proved by either direct or circumstantial evidence. 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 persons just as direct evidence. Way back in 1928, Lord Heward, CJ stated as follows on circumstantial evidence in *R v Taylor, Weaver, and Donovan* [1928] Cr. App. R 21: -

“It has been said that the evidence against the Applicant is circumstantial. So, it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances that, by intensified examination, can prove a proposition with the accuracy of mathematics. Therefore, it is no derogation from evidence to say that it is circumstantial.”

“Before circumstantial evidence can form the basis of a conviction, however, it must satisfy several conditions designed to ensure that it unerringly points to the Accused persons, and



to no other persons, as the perpetrator of the offense. In *Abanga alias Onyango v R Cr. App. No 32 of 1990*, this court set out the conditions as follows:

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Accused; (iii) 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.

52. Consequently, I find that PW2’s evidence places the Accused around the scene of the crime. In fact, just outside their family home where the murders occurred. The Accused persons even told him in Kikuyu that ‘nimewamalizia.’ At this juncture, I would like to address the issue of the Accused’s alleged confessions to PW2 and, later, PW1.
53. The Accused told both PW2 and later PW1 in Kikuyu that ‘nindamarikiria’ refers to his mother and the child, who was his niece. The defense tried to play semantics to establish that the Accused did not mean that he had finished and killed the Accused. The word ‘nindamarikiria’ has several meanings in the Kikuyu language, but I find that in the context in which the Accused used the word, it certainly meant that he had finished the Deceased persons. This is further reinforced by the fact that both the witnesses, who are Kikuyu speakers, understood the Accused’s words to mean that he had finished the Deceased persons and not any other meaning.
54. Therefore, I find that these statements amount to confessions by the Accused that he had killed the Deceased persons. That being the case, there is a plethora of overwhelming evidence against the Accused persons, so even if I was to discount this part of the evidence, it does not in any way dislodge the prosecution’s evidence that the Accused committed the unlawful act that led to the Deceased’s death or break the link of circumstantial evidence against him. The chain of events remains consistent and cogent that the Accused mercilessly killed his mother and niece.
55. Additionally, PW2 stated that he found a panga in the home which he identified in court as the panga he saw on that day. PW8 also testified that when they proceeded to the scene of the crime with DCI Officers, they found a panga which they believed was the murder weapon, and he identified it as P. Exhibit 7. The panga was later forwarded to the government chemist for forensic analysis. PW8, a Government Analyst, testified that the panga was stained with human blood, and upon examination, the blood matched the DNA profile of the 2 Deceased persons and the Accused. I find that this conclusively links the panga to the Accused and the Deceased persons proving that it was the murder weapon and that it had been used by the Accused to commit these heinous crimes against the Deceased persons.
56. The Deceased’ persons had died as a result of cut wounds inflicted by the panga. The injuries found on their bodies were in tandem to slash wound caused by a sharp object, in this case, the panga that was found at the scene of the crime. There was, therefore, a nexus proved to link the Accused to the injuries that led to the Deceased death.
57. I theorize that after killing his mother and the Deceased, the Accused may have used the same panga to cut his neck in an attempt to commit suicide. PW2 stated that he met the Accused with a fresh cut on his neck; I believe this was just after he murdered the Deceased persons. This is informed by the fact that the sequence of events indicates that the Accused’s intention was to kill all his family members, including himself. He went to the school looking for Mathenge to finish him. While there, he told PW1 that he was on a journey with his family members and that he was leaving the world. PW8 even



asserted that the Accused wanted to commit suicide and had said that he cut himself to kill himself. That he pleaded with them to kill him with a gun, and he also asked for a sharp knife to kill himself or take his life.

58. Additionally, there seems to have been a pre-existing grudge between the 2nd Deceased person and the Accused, who claimed that the mother had bewitched him. PW2 reiterated that the Accused told him the words 'nindamarikiria' and that their mother had sold them to Satan. The allegation that the Accused's mother had bewitched him, whether true or not, seems to have been the reason why the Accused attacked her and his niece, eventually killing them.

59. In my view, all the pieces of evidence analyzed separately are so strong that when pieced together, they unerringly point to the Accused persons as the perpetrator of the offense. In its earlier decision in *Mwangi and Another v Republic* [1984] eKLR, the Court of Appeal exhorted that:

“In a case depending on circumstantial evidence, each link in the chain must be closely and separately examined to determine its strength before the whole chain can be put together and a conclusion drawn that the chain of evidence, as proved, is incapable of explanation on any other reasonable hypothesis except the hypothesis that the Accused is guilty of the charge.”

60. I find that the prosecution has, beyond a reasonable doubt, proved that the Accused is the one who caused the unlawful act that led to the death of the Deceased' persons.

61. In the end, what is left is for this court to determine whether the Accused had malice aforethought; in particular, the question is whether the Accused was or was not sane when he killed his mother and niece.

62. The law on sanity and insanity is contained in Sections 9 to 12 of the Penal Code.

63. Section 11 of the Penal Code provides that every person is presumed sane and responsible for his actions at all times, including when he is alleged to have committed an offense, because sanity is the normal and usual condition of mankind. It stated that: -

“11. Every person is presumed to be of sound mind and to have been of sound mind at any time which comes in question until the contrary is proved.”

64. Nevertheless, Section 12 of the Penal Code gives recognition to the defense of insanity because the presumption of sanity is rebuttable. Section 12 provides for the application of the defence of insanity in the following terms:

“12. A persons is not criminally responsible for an act or omission if, at the time of doing the act or making the omission, he is, through any disease affecting his mind, incapable of understanding what he is doing or of knowing that he ought not to do the act or make the omission; but a persons may be criminally responsible for an act or omission, although his mind is affected by the disease if such disease does not, in fact, produce upon his mind one or other of the effects above mentioned in reference to that act or omission.”



65. This section must be read together with Section 9 of the Penal Code, which provides:

“9.(1) Subject to the express provisions of this Code relating to negligent acts and omissions, a persons is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.”

66. Additionally, Section 166(1) of the Criminal Procedure Code also provides that: -

“166(1). Where an act or omission is charged against a persons as an offense, and it is given in evidence on the trial of that persons for that offense that he was insane so as not to be responsible for the acts or omissions at the time when the act was done or the omission made, then if it appears to the court before which the persons is tried that he did the act or made the omission charged but was insane at the time he did or made it, the court shall make a special finding to the effect that the Accused was guilty of the act or omission charged but was insane when he did the act or made the omission.

67. Moreover, for the defense of insanity to stand, the Accused must satisfy the grounds set out under the McNaughten Rules in McNaughten Case (1843) 10 C1 & Fin 200. The test is purely cognitive, and the defense must show whether the Accused understood her actions or that her actions were wrong. The McNaughten Rules require that the following three tests should be proved:

68. That an individual suffers from a “defect of reason,

ii. That it was caused by a “disease of the mind,”

iii. That, as a result, they do not know the “nature and quality” of the act or that it is wrong.

69. Further, in Leonard Mwangemi Munyasia v Rep [2015] eKLR, the court held that: -

‘It is a rule of universal application and criminal responsibility that a man cannot be condemned if it is proved that at the time of the offense, he was not a master of his mind...’

.....

Under the rule, insanity is a defense if, at the time of the commission of the act, the Accused persons was laboring under such a defect of reason, from a disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong. In such circumstances, the Accused persons will not be entitled to an acquittal but under section 167 (1) (b) of the Criminal Procedure Code, he would be convicted and ordered to be detained during the President’s pleasure because insanity is an illness (mental illness) requiring treatment rather than punishment. Such people, when so detained, are considered patients and not prisoners.

70. The Accused herein denies that he committed the crimes he is charged with. In spite of that, he asserted that the last time he left home before his arrest, he woke up and had a quarrel with his wife, who was accusing him of drug abuse. She also accused him of taking her chicken and throwing them into the latrine. He then found himself arrested, and his wife came to see him at the police station. He stated that he was told that he was acting in an abnormal way and that he had injuries on the neck. He asserted that he did not know what happened.

71. The Accused averred that he told the psychiatrist that his mother and grandmother had a mental disorder. He stated that he knows that his mother is alive, although he was told that she is dead and that he does not know who killed the two victims herein. Furthermore, he averred that he was found



- to have been taking cannabis and other substances in Nairobi. He was trying to stop the abuse, but he was having nightmares, hallucinations, dreams that he was being chased at night, and strange things eating him.
72. He asserted saying that his wife had written a statement to the police that stated that he was a mad person. The statement was produced as D. Exhibit 1, and his mental assessment report as D Exhibit 2. He concluded by stating that he had no grudge against his mother and that they have a family problem of mental disorder.
  73. Upon cross-examination, the Accused reiterated that he had no problem with his mother and that he was mad at the time of the alleged incident. That he cannot remember how his mother and his niece died.
  74. On the other hand, from the evidence of witnesses who saw the Accused on the material day, they all testified that the Accused did not appear mentally disturbed or insane. In cross-examination, PW1 stated that he had interacted with mentally disturbed people, but the Accused did not look mad and looked like a normal person. PW2 averred that he could not tell if the Accused was mentally disturbed, that he did not complain of pain, and that he acted normal as if he was not in pain. PW3 stated that he was with the Accused for a short moment, and he did not observe whether he was mentally disturbed and that the Accused never said a word to them as well as PW8, who stated that he could not say if the Accused was mentally disturbed or not.
  75. Notably, it is instructive that none of these witnesses observed any signs that the Accused persons was mentally disturbed or insane. Of course, they were around the Accused on the fateful day and days after and had a chance to observe him contemporaneously with the occurrence of the murders, but they were all consistent with the fact that he appeared to be normal, and they could not tell if there was any mental disturbance on the Accused's part.
  76. On record, there is no trace of the Accused's wife's statement and psychiatrist report that the accused could rely on to prove his insanity in the court file, and I find that his claims that he was mentally ill are, therefore, unsubstantiated. There are no medical records to prove the same. Additionally, suppose the accused's family had a history of mental disturbance, as he alleged. In that case, I question why he did not call his family members or doctors who had treated them or him to testify to substantiate his allegations. The only psychiatric reports available were from Dr. J.W. Njau, dated 6th July 2018 and 24th April 2019.
  77. In the first report, Dr. Njau stated that upon mental status assessment of the Accused, he found that the Accused was mentally sound, he had no behavior or speech problem, and his thoughts and perceptions were essentially normal. In addition, he has good concentration and attention, understands the charges he is facing, and can follow the court proceedings and defend himself or instruct his lawyer. Notably, it was indicated that the Accused informed the psychiatrist that he has no personal or family history of mental illness.
  78. In the second report, the psychiatrist indicated that the Accused was mentally stable. He was calm, talked coherently, and his thought and perception were normal. He has good concentration, memory, attention, and judgment. He once again found that the Accused understands the charges he is facing and can follow the court proceedings and defend himself or instruct his lawyer. Contrary to the first report, it was indicated that the Accused stated that his mother and grandmother suffer from mental illness. This does not in any way prove that the Accused suffers from mental illness. Interestingly, by the time this report was done, the Accused had already been charged with count I, and the 2nd report was done with respect to the second count. I believe that the contradiction in the statements made to



the doctor is because, at this point, the Accused had already begun curating his fictitious defense of insanity.

79. These assessments beg the question of whether the Accused has a history of mental illness. It is my scrupulous view that if that were the case, the psychiatrist would have established the same and found that the Accused had a medical history of mental illness. Accordingly, I rely on these assessments to hold that the Accused's allegations that he had had mental illness and that he was mentally unsound at the time of committing the crimes were unfounded and deceitful.
80. Most importantly, as the trial court, I had the advantage of seeing and hearing the Accused in court, and I believe that the Accused herein is a pretender. The Accused put on an act to convince this court that he was insane to deceive the court, but his act was not convincing. He attempted to mislead the court by stating that he did not know what happened to the Deceased persons and that his mother was not dead, but it remains only that; an act. The show of insanity that he put up was callous, and fell short of proving his claims that he was insane. In his defense, he was economical with the truth, full of mere denials.
81. The Accused horrifyingly killed his own mother and niece using a panga and is now attempting to blame insanity for his crimes falsely. He is a vile man who deserves no pity from this court for the crimes he committed. He claimed two innocent souls in the most abominable manner in a murderous rampage. It is a pity that the Accused does not appear to realize the severity of his actions and the fact that they were permanent and that the precious lives of the Deceased persons, which he selfishly ended, were irreplaceable.
82. I firmly reject the defense of insanity as advanced by the defense. I find that there is insufficient evidence to establish that the Accused was suffering from Mental illness on the day this incident took place. Accordingly, I find that the Accused did not satisfy the grounds set out under statute, case law, and the McNaughten Rules.
83. Section 206 of the Penal Code sets out the circumstances which constitute malice aforethought as follows:

“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:

- a. an intention to cause the death of or to do grievous harm to any persons, whether that persons is the persons actually killed or not;
- b. the knowledge that the act or omission causing death will probably cause the death of or grievous harm to some persons, whether that persons is the persons actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
- c. ...”

84. In the instant case, I find that the Accused was fully aware of his actions when killing the Deceased persons and wielded the panga with full knowledge and intention to kill the Deceased persons. I finding that he knew the consequences of his actions and that the inference of malice flows from the type of weapon the Accused chose, i.e., the panga, and the fact that he inflicted the injuries on the Deceased persons mostly on the head region. Further, it is instructive that it was not enough for the Accused to attack his mother, whom he supposedly had a problem with; he went ahead and killed his harmless niece. I, therefore, find that there is an evidential



basis for me to conclude that the Accused had the mens rea necessary for a finding of a guilty verdict for the offense of murder.

85. As a result, it is my finding that the prosecution has proved the charge of murder contrary to Section 203 as Read with Section 204 of the Penal Code against the Accused on both counts beyond any reasonable doubt.

i. I find the Accused guilty of the said offense of murder on both Count I and Count II, and he is convicted accordingly.

**DATED, SIGNED, AND DELIVERED AT NYAHURURU THIS 27TH DAY OF APRIL 2023.**

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**CHARLES KARIUKI**

**JUDGE**

