



**Republic v Muthoni (Criminal Case 19 of 2018)  
[2023] KEHC 17976 (KLR) (25 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17976 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CRIMINAL CASE 19 OF 2018  
CM KARIUKI, J  
MAY 25, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JAMES KIMARI MUTHONI ..... ACCUSED**

**JUDGMENT**

1. James Kimari Muthoni, the Accused herein, is charged with an offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). Particulars being that on 13<sup>th</sup> September 2014 at Mukindu Sub-Location in Rurii Location, Olkalou within Nyandarua County, the Accused murdered David Njoroge Kuria, the Deceased herein.
2. The Accused pleaded not guilty, and the Prosecution called seven witnesses, after which the Accused was put on his defence, of which he gave sworn testimony. The evidence adduced by the Prosecution witnesses is as follows: -
3. PW1 Peter Mucheru Wainaina testified that on 13/9/2014, he left work and passed by the Masonko Club at Mukindu. He found people in the club, and they drank till 8.00 pm when he left to go home. He stated he was with people he knew, including the attendant Wanjiru, Njoroge, who was killed, and Kimani Maina.
4. It was his testimony that after he arrived home, the bar attendant Wanjiru called him to inform him that a person had been stabbed outside his bar. He went back to the club and found Njoroge outside. He had been stabbed in the neck and was bleeding a lot. He did not see the need to take him to the hospital because he was finished and looked dead. He then called the police at Olkalou, who came and picked him up.
5. PW1 stated that he heard a quarrel between Kimari and Njoroge but did not find Kimari at the scene. That he cannot recall whether the Accused and Deceased were together. He averred that the Accused



- used to live with the grandmother, and Njoroge hailed from their home. That he did not know much about them and did not see the weapon that was used.
6. In cross-examination by Mr. Muchangi, advocate for the Accused, PW1 asserted that he returned to the bar when called. He found Njoroge outside and did not see Accused. He stated that he was told that the Accused had stabbed the Deceased. There were many people and it was a crowd so nobody, in particular, told me. That Deceased was stabbed outside the bar, and he did not know if the waiter was outside. He reiterated that he did not touch the Deceased, but he guessed that he was dead. He stated that he was stabbed in the neck but could not tell which side of the neck.
  7. PW2 Michael Macharia Waititu, the Deceased's uncle, testified that he received a call from his son Joseph Njoroge on the material day at about 9.00 pm informing him that David had been killed by stabbing. His son told him that he was stabbed in a bar at Mukindu. He went to that bar and found the Deceased outside, and he was dead.
  8. He stated that he found a big crowd of people, and the body was still at the scene. That the Deceased had injuries on the left side. That the police from Olkalou arrived at the bar, and he told them that he was his father. He confirmed that he could not tell why the death occurred.
  9. PW2 asserted that on 14/9/2014, he went to identify the body with Manasse Kuria. The Deceased had only one injury to the neck. Further, he averred that he was not shown any weapon at the bar but heard that the police recovered the knife. Finally, he claimed that he saw the Accused at the police station and did not know him before.
  10. PW3 Joseph Kuria, the Deceased's father, testified that he was at home on the material day when he was called by Mwangi Gideon, who told him that the Deceased had died. He said to him that they were in a bar. He stated that he did not know what happened and found his son dead with injuries on the left side of the neck.
  11. PW3 alleged that he did not see the knife and could not tell what happened before the death. That he had not heard that the Deceased had a dispute with anybody. He asserted that he saw the Accused at the police station and did not know him before.
  12. PW4 Doctor Patrick Kingu, No. A7137 Senior Medical Officer, MOH Olkalou J M Kariuki Hospital, confirmed that he had conducted the Deceased's postmortem. He stated that the Deceased was a male African and had a stab wound 2cm above the cervical externally, 3cm wide, and 14 cm deep (see postmortem report). No other injuries were found.
  13. PW3 testified that internally he found the left lung punctured, and blood was also in the chest in the cardiovascular region (see postmortem page 3). Therefore, in his opinion, the cause of death was a stab wound on the lungs (see postmortem page 3). He produced the postmortem report as P Exhibit 1.
  14. PW5 No. 235462 Daniel Ombagi, D/OCS – Olkalou Police Station testified that on 9/11/2018, they were on duty at a funeral near Olkalou town when a member of the public informed him that there was somebody who had committed murder and disappeared in 2014. He arrested him and took him to Olkalou Police Station. He confirmed that the person he arrested is in Court as the Accused.
  15. In cross-examination, he stated that he did not record any statement from members of the public. That they said that the Accused was well known in the village and he had fled.
  16. Upon re-examination, he asserted that a file was pending, and the Accused was known; thus, no identification parade was conducted.



17. PW6 No. 50836 PC Mutisya Nzioka, attached to Olkalou Police Station, pointed out that he was not the initial investigation officer and that his colleague had been transferred to Muranga but was familiar with the matter.
18. He testified that on 11/11/2014 at 14.30hrs, he was on duty when CIP. Masinde instructed him to take over the file opened in 2014. That the suspect had already been arrested, he went through the file and found that it had witness statements and a copy of the postmortem report. He stated that CIP Masinde went to Mukindu Trading Centre and attended to the scene of the incident guided by the father of the Deceased. That he drew a rough sketch of the scene of the incident.
19. He claimed that from the witness statements, a fight started in a bar, leading to the victim and the Accused pushing one another outside the bar. Accordingly, the Sketch was produced as P exhibit 2.
20. He alleged that the Accused had fled after the incident in 2014. That he was arrested when he came for a burial. In his statement of inquiry, he admitted that he fought with the Deceased. The Deceased's brother identified the Accused as they came from the same village. Further, he stated that he got items gathered from the scene, such as a knife with a blunt handle in the file.
21. PW6 asserted that he had gathered that the Accused and Deceased were fighting over debt from the witnesses' statement.
22. Upon cross-examination, PW6 stated that the Accused never admitted to committing the offence. He interrogated the bar owner, and she said that the Accused and Deceased had a commotion in the bar. The statements do not indicate that any witnesses saw the Accused stabbing the Deceased. He asserted that the scene had no street light though he went during the day.
23. In re-examination, he ascertained that he did not see a street light at the scene and that there were buildings, but he did not verify the intensity of light at night.
24. PW6 was later recalled. He reproduced the witness statements that implicated the Accused with murder.
25. He stated that the previous investigation officer was bedridden in Muranga due to an accident. However, he had recorded a statement while still in Muranga that he had recopied what he had forwarded in the email. He stated that on 13/9/2014 at 9 pm, while at work in Standard Bank, he was called by the OCS, Corporal Ojamong, who instructed him on the murder matter herein. They visited the scene and found the victim lying in a blood pool; he had a wound on the left side of the neck.
26. He stated that after talking to people around, he gathered that the Accused and victim had fought. The body was then collected and taken to JM Kariuki Hospital Mortuary. The next day at 11 am, he got information from the area near the scene that a knife was found, and he proceeded to collect the knife.
27. PW6 produced the statement dated 10/11/2018 as P Exhibit 2 and the Knife as P Exhibit 3.
28. Upon cross-examination, he stated that he had gathered information from the witness statement that the fight between the Accused and the victim had started in a bar. That the barmaid did not witness the stabbing. He asserted that a person from the place discovered the knife. He did not know what made the officer make the knife a murder weapon. The kind of knife produced is expected, and the evidence of knife ownership is unavailable. He reiterated that there was no eyewitness for the stabbing.



## **Defence Case**

29. DW1 James Kimari Muthoni testified that on 13/9/2014, he went to Masonko Bar after work. That there were three others, and they had Kshs. 1000 which was to be shared between him and another person. That he was to get kshs. 100 from the amount.
30. He asserted that he decided to go home, and later, he returned and found Kinyoro, whom he was to get the kshs. 100/= from, but instead, he bought alcohol for the same amount. He took 2 cups of keg and went home. He never quarreled with Kinyoro and left him in the pub. He stated that they do not live in the same direction.
31. The Accused testified that he left at 8 pm to go home and never got information about the incident. He went to Nairobi the following day, where he used to work. He was arrested in 2018 in Olkalou after he had come. He was never informed of his offence until the time the matter was read in Court.
32. He pointed out that the person in charge as the victim is David Njoroge Kuria, who is from his village, but he was never with him on the material day. That at no time did they have any case or dispute and that he never killed him.
33. Upon cross-examination, he stated that he knew Njoroge was married with a family and that he was older. That they had passed him in the morning working elsewhere. He stated that he went to Masonko Pub and did not see Deceased in the pub at 4 pm or when he returned at 7 pm. He stated that he took two kegs (about ½ liter each) and that there were many people (about 10). That the bar attendant was a lady, but she was new.
34. He reiterated that he did not fight with Deceased and denied stabbing him with a knife. That the incident happened in 2014, but he was arrested in 2018. He claimed that he did not run away and did not know there was an incident as he used to come home and had not been arrested before 2018. He was working in Nairobi but had no evidence to show the same. He was arrested when he came for a funeral, and he alleged that while at the police station, he did not write a statement but was told to sign.
35. On re-examination, he stated that he had a makeshift kibanda. He used to visit home before his arrest and was never told that the police were seeking him.
36. The parties were then directed to canvass an agreement via filed and exchanged submissions.

## **Prosecution's Submissions**

37. The Prosecution submitted that there are three crucial ingredients of the offence of murder, all of which must be proved beyond any reasonable doubt to prove the offence: -
  - i. Proof of the fact and cause of death of the Deceased
  - ii. Proof that the Deceased met their death due to an unlawful act or omission on the part of the Accused.
  - iii. Proof that the said unlawful act or omission was committed with malice aforethought.

## **Fact of the death of the Deceased, there cannot be any doubt.**

38. The Prosecution submitted that the information states that the Deceased had been murdered on 13th September 2014 at Mukindu village, and a postmortem was conducted on his body which Gedion Wang'ombe and Michael Macharia identified on 17<sup>th</sup> September 2014 who are his relatives



and confirmed that he was indeed dead. Further, a postmortem was conducted at Olkalou District Hospital, and a Death Certificate No. 05XXXXX was issued.

39. On the cause of death of the Deceased
40. It was stated that the Postmortem Report from Olkalou District Hospital showed that the Deceased died on 13/9/2014 due to a stab wound on the lungs, mediastinal vessel, and punctured heart leading to death. This was expert evidence regarding the cause of death and was neither challenged nor controverted in any way of the defence.
41. On whether an unlawful act or omission on the part of the Accused person caused the death.
42. The Prosecution argued that though no eyewitness account was presented to Court, PW1, PW2, and PW3 testified that they were told that the Deceased was stabbed while at Masonko's Club by a fellow customer after a quarrel. In his defence, the Accused placed himself at the scene but denied committing the offence.
43. It was contended that though the offence occurred in 2014, the Accused was eventually arrested in 2018 after escaping to Nairobi and was arrested when he had sneaked back for a funeral.
44. Reliance was placed on *Sawe v. Republic* [2003] KLR 364

On whether the said unlawful act or omission was committed with malice aforethought.

45. The Prosecution asserted that PW1, PW2, and PW3 were told that the Accused had stabbed the Deceased with a knife while at Masonko's Bar. The evidence was clear that the Deceased was not armed then. The Accused produced a knife and stabbed the Deceased after a quarrel.
46. It was averred that the fact of stabbing the Deceased with a knife on the lungs and the heart consisted of malice aforethought for those are crucial and critical organs in the human body, and their puncture would probably cause death if not grievous harm. He intended to cause death.
47. The Prosecution pointed out that when placed on his defence, the Accused did not challenge the Prosecution's case and that his defence was mere denial. Further, he did not call any witnesses to support his claims. Similarly, the Prosecution's evidence was that he had escaped immediately after committing the offence. He did not challenge this allegation as he did not call any witness to support his allegations that he had been working in Nairobi even before and after the incident. The Accused's submissions do not challenge the Prosecution's case against the Accused, who placed himself at the scene but denied committing the offence.
48. In the upshot, they submitted that the Prosecution had proved its case and prayed that the Accused be convicted of murder.

### **Accused's Submissions**

49. The Accused submitted that PW1, the bar attendant where it was alleged that the Accused and the Deceased had been drinking together earlier in the evening, testified that the stabbing did not occur inside the bar, nor did she personally witness the Accused stab the Deceased. Instead, she stated that she heard from third parties that the Accused had stabbed the Deceased.
50. In this case, it was contended that the said third parties having not been called as witnesses renders the culpatory testimony as inadmissible hearsay.



51. It was argued that the Prosecution had not called any evidence showing an unbroken chain of events from the time of the alleged confrontation inside the bar earlier in the evening between the Accused and the Deceased to the time of his death.
52. The Accused submitted that while PW4, who conducted the postmortem on the Deceased, confirmed that the cause of death was stabbing using a 3cm wide and 14cm length blade, PW7, the Investigating Officer who produced the alleged murder weapon, did not call evidence to match the alleged murder weapon with the stab wound.
53. Further, in PW5, the arresting officer was unsure whether an investigation had been initiated or commenced in 2014 or whether there was any active warrant of arrest in force against the Accused person. None of the persons who allegedly identified the Accused at the funeral were called as witnesses.
54. The Accused pointed out that PW7, on cross-examination, testified that there was no nexus between the alleged murder weapon and the Accused person as that kind of knife was a common household item. The alleged murder weapon was not taken for forensic testing, nor were there any particular features or marks connecting the knife to the Accused person.
55. The Accused affirmed that no witness saw the Accused holding the alleged murder weapon before or immediately after the stabbing. There are no fingerprints, DNA evidence, or other forensic evidence linking him to the alleged murder weapon.
56. It was stated that the Accused person gave sworn testimony wherein he admitted to being inside the said club but denied any confrontation with the Deceased. Furthermore, he denied leaving the bar with the Accused person as he lived on two sides of the village. On allegations that he had escaped from home following the incident, the Accused testified that he had left home back to Nairobi, where he was self-employed as a hawker. He further stated that he had visited home on several occasions.
57. The Accused asserted that the main issue for determination. Is whether the Prosecution established beyond reasonable doubt that the Accused caused the death of the Deceased with malice aforethought.
58. It is the defense's submission that the Prosecution has not called any eyewitness nor forensic evidence linking the Accused person to the alleged offence. It was contended that:-
  - i. There is no eyewitness account of the Accused leaving the aforesaid bar together nor the two engaging in a confrontation outside the bar leading to the stabbing.
  - ii. Neither did the Prosecution establish the distance between the bar and the crime scene.
  - iii. None of the witnesses who testified placed the Accused at the murder scene at the time of the murder nor the alleged murder weapon on the Accused's hands.
  - iv. The Prosecution has not called any credible evidence to establish motive. The alleged slight confrontation inside the bar cannot amount to motive as there is no corroborating evidence that the confrontation occurred or what it was about. Therefore, the actus reus and men's rea have not been demonstrated beyond a reasonable doubt to find a prima facie case.
  - v. The mere fact that the Accused left his home area without any proof there were any police reports made immediately after the said incident wherein the Accused was named as a suspect cannot infer guilt whatsoever.
59. Lastly, it is the defence's humble submission that there is no evidence that the Accused committed the alleged offence, and the honourable Court should acquit the Accused under Section 210 of the [Criminal Procedure Code](#) for lack of evidence.



## Analysis and Determination

60. Having evaluated all the evidence on record and considered the Prosecution's and the Accused's written submissions, I have framed only one issue for determination which is as follows:-
- i. Whether the Prosecution has proved its case to the desired threshold of beyond reasonable doubt.
61. Section 203 of the Penal Code defines the offence of murder. It requires proof of the following elements beyond any reasonable doubt to establish the offence of murder: proof of death, the cause of that death, proof that the death was due to an unlawful act or omission, that the unlawful act or omission was on the part of the suspect and that the unlawful killing was with malice aforethought.
62. Additionally, in *Republic v Andrew Omwenga* [2009] eKLR, the Court stated that:-
- “It is clear from this definition that for an Accused person 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 that the Prosecution must prove beyond any 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.
63. Section 107 (1) of the *Evidence Act* Cap 80 of the Laws of Kenya casts upon the Prosecution the burden of proof to tender evidence to disapprove the innocence of an Accused person. The section provides that:
- “(1) Whoever desires any court to give judgement as to any legal right or liability on the existence of facts which he asserts must prove those facts exist.
- When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”
64. Accordingly, the Prosecution bears the burden to prove that the offence was committed and that the culprit is the Accused person in the dock. That evidence by the Prosecution must meet the threshold of beyond reasonable doubt and nothing less like fanciful and suspicious possibilities. It is not in dispute that the Accused herein has been charged with the offence of murder contrary to Section 203 of the *Penal Code*, and therefore I shall subject him to the standard of proof illustrated above.
65. The first issue for consideration is proof of death. In the instant case, the Deceased's death is not in dispute. On the contrary, all the Prosecution witnesses confirmed the same, more so by the evidence of PW4, who conducted the postmortem on the Deceased's body. After examination, he concluded that the Deceased's cause of death was a stab wound on the lungs. Accordingly, the Prosecution has satisfactorily proved this element beyond any reasonable doubt.
66. Further, there is no doubt that an unlawful act caused the death of the Deceased. The postmortem report prepared by PW4 revealed that the Deceased's cause of death was a stab wound on the lungs, mediastinal vessel, and punctured heart leading to massive internal bleeding leading to death. Article 26 (1) of the *Constitution* guarantees every person the right to life. Therefore, I find no justifiable or lawful



- reason for stabbing the Deceased. In the circumstances, I am persuaded beyond reasonable doubt that the Deceased died out of an unlawful act.
67. The next question then is whether the Accused herein is the one who unlawfully caused the Deceased's death. None of the Prosecution witnesses saw the Accused stabbing the Deceased; therefore, there is no direct evidence. In essence, the Prosecution's case is based on circumstantial evidence. Before such evidence forms the basis of a conviction, it must satisfy several conditions designed to ensure that it unerringly points to the Accused person and no other as the perpetrator of the offence.
68. In *Abamad Abolfathi Mohammed and Another v Republic* [2018] e KLR, the Court of Appeal stated as follows on reliance on circumstantial evidence:-
- i. "However, it is a truism that the guilt of an Accused person 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 solid basis for proving an Accused person's guilt just as direct evidence. In 1928 Lord Heward, CJ stated as follows on circumstantial evidence in *R v Taylor, Weaver, and Donovan* [1928] Cr. App. R 21: -
  - ii. "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. So it is no derogation from evidence to say it is circumstantial."
  - iii. ....
  - iv. "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 Subject person, and to no other person, as the perpetrator of the offence. In *Abanga alias Onyango v R* Cr. App. No 32 of 1990, this Court set out the conditions as follows:
  - v. "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 Subject; (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."
69. In the case of *Neema Mwando Nduzuya v R* [2008] eKLR, it was held that circumstantial evidence must be examined very closely before forming a basis for conviction. Similarly, in cases of *R v Richard Itweka* [2020] eKLR, *Regina v Exall and Others* [1886] 176 ER 850, and *Mwangi and Another v Republic* [2004] 2KLR 32 stressed that each link in the circumstantial evidence chain must be closely and separately examined before the whole chain is put together and a conclusion drawn on the guilt of the Accused.
70. Further, in the case of *Sawe v Republic* [2003] eKLR, the Court reiterated the above-stated conditions and added that the Prosecution must also establish that no other coexisting circumstances could weaken or destroy the inference of guilt.
71. Accordingly, the evidence of PW6, the investigating officer, on behalf of the previous investigating officer, was that upon arrival at Makindu Trading Centre, they found the Deceased's body in a pool of blood with a deep knife stab on his left-hand side neck. He stated that after interrogating some people at the scene, he established that the Deceased had been fighting with the Accused, who stabbed him



once in the neck and ran away. One of the barmaids on duty witnessed the fight that day by the name of Grace Wairimu.

72. On a later date, he received a phone call from one of the witnesses from Makindu, who informed him that they had found a knife near the scene of the murder and they suspected that it was the one used to stab the Deceased. The officer proceeded to collect the knife, and he found that it was near where the Deceased body was. Therefore, he took it and kept it as an exhibit from this case. He asserted that the person believed to have committed this crime ran away after the incident but was later arrested in November 2018, and that is when charges were brought against him.
73. The only evidence that would have linked the Accused to the commission of this crime was the alleged testimonies from people around the bar who stated that the Accused and the Deceased were fighting and that he stabbed the Deceased. Particularly the evidence of the barmaid who allegedly witnessed the fight emanating from the bar. Nonetheless, the investigating officer and the Prosecution never produced these witnesses during the hearing. His evidence was based on hearsay. Even the knife that was alleged to be the murder weapon cannot be verified as such and cannot in any way be linked to the Accused person herein.
74. I reiterate that the strands of evidence presented by the Prosecution must connect the Accused person with the death of the Deceased beyond any reasonable doubt. Unfortunately, however, there are grave weak links in the Prosecution's evidence against the Accused, which include - the failure to produce the witnesses who allegedly saw the Accused and the Deceased fighting and perhaps him stabbing the Deceased, the inability to place the Accused person and the Deceased person together when the crime was committed; the Prosecution could not even establish whether there was a fight between the Accused and the Deceased and whether they had even interacted on the material night or that he was the one that was last seen with the Deceased.
75. Interestingly, even PW1, who was at the bar and stated that he saw the Deceased testified that he had heard that there was a quarrel between Kimari and Njoroge, but he did not find Kimari at the scene. Therefore, so that he cannot recall whether the Accused and Deceased were together, PW1 could not ascertain whether there was a fight and relied on hearsay, and he had not seen the Accused and Deceased together while he was at the bar.
76. The Accused person stated that he was in the bar on the material day but did not see or fight with the Deceased. He said that he used to work in Nairobi and returned to visit home severally, but no one had told him that the police wanted him until he was arrested in 2018. His defence was not in any way displaced by the Prosecution. Even if the Accused person is said to have run away, there is nothing that proves that he is the one that killed the Deceased person or that he ran away because of the same. This Court cannot rely on hearsay or mere suspicions and opinions to convict him as such.
77. In my view, all the pieces of evidence analyzed separately are not as strong, so when pieced together, they do not unerringly point to the Accused person as the perpetrator of the offence herein. I associate myself with the holding of the Court of Appeal in *Erickson Chengoli Wanyonyi v. Republic* [2018] eKLR, where the Court stated as follows: -

“We find that there was no circumstantial evidence adduced against the appellant that could lead to the inescapable conclusion that he was guilty of the murder of the Deceased. All there was, was suspicion, but a court of law cannot act on mere suspicion, no matter how strong. The appellant's conviction was therefore not safe.”



78. Accordingly, I find that there is no direct or circumstantial evidence adduced by the Prosecution that links the Accused person to the unlawful act that caused the wrongful death of the Deceased; therefore, find that the Prosecution failed to prove this ingredient to the desired threshold.
79. Furthermore, the last element in proving the offence of murder against the Accused is that the Accused had malice aforethought in causing the death of the Deceased—the definition of malice aforethought which is established in Section 206 of the *Penal Code*. According to the section above, malice aforethought is deemed to be established by evidence that proves an intention to cause death or to do grievous harm to any person, whether that person is killed or not.
80. In the instant case, none of the Prosecution witnesses gave any concrete evidence on whether the Deceased and the Accused knew each other or whether they had fought on the material night in a way that would have resulted in the Deceased's death. Furthermore, the witnesses confirmed that they were unaware of any pre-existing grudge between the Accused and the Deceased.
81. This Court finds that the Accused was arrested on mere suspicion and that the Prosecution has failed to prove that the Accused had any motive to kill the Deceased.
82. For the above reasons, this Court finds that the Prosecution has failed to prove its case against the Accused to the desired threshold. Accordingly, the Accused, James Kimari Muthoni, is hereby found Not Guilty of the charge of murder contrary to Section 203 as read with Section 204 of the *Penal Code*, and Thus the Court makes the orders.
- i. The accused is hereby acquitted of the offence of murder under Section 306(2) of the *Criminal Procedure Code* and is as a result, set at liberty forthwith unless otherwise lawfully held.

**DATED, SIGNED, AND DELIVERED AT NYAHURURU THIS 25<sup>th</sup> MAY 2023.**

.....

**CHARLES KARIUKI**  
**JUDGE**

