



REPUBLIC OF KENYA



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**Republic v Loriu (Murder Case 32 of 2017)
[2023] KEHC 26701 (KLR) (21 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 26701 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
MURDER CASE 32 OF 2017
CM KARIUKI, J
DECEMBER 21, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

SOSPETER LOMONG'O LORIU ACCUSED

JUDGMENT

1. Sospeter Lomong'o Loriu, the accused person herein was charged with the offense of murder contrary to Section 203 as read together with Section 204 of the Penal Code Cap 63 Laws of Kenya and the particulars as per Information dated 30th August 2017 signed by Dorcas Rugut, Principal Prosecution Counsel are that on 27th August 2017 in Rumuruti Township, Laikipia West Sub-County within Laikipia County, the accused person herein shot dead Lekupuri Leiyagu, the deceased herein.
2. The accused person pleaded not guilty to the charge.
3. The prosecution's case was made up of 9 witnesses. Briefly, they presented their case as follows: -

Prosecution Case

4. PW1 Fredrick Leiyagu testified that he identified the deceased's body on 22/9/2017. He stated that he had an injury on the back of the head.
5. PW2 No. 67089 CPL Isaac Lel Male stated that he was a KDF officer based at Ol Moran at the time of the offense. He testified that on 29/8/2017 at about 11 am, they had gone to draw water in Rumuruti Town. At the time, they were on an operation at Ol Moran, north of Rumuruti. He was with nine officers, including Okul and Sospeter Lomong.
6. It was his testimony that after drawing water, he heard a gunshot. After 5 minutes, Okul came back with the accused and told them that the accused had killed one person and injured another in the leg.



- He stated that he ran to the scene with Lt. Muhindi and found that a person had been shot. Okul told them that he was shot in the eye and had died. The deceased was a child of about 14 years. He asserted that he did not get the second person because he had been taken to hospital and police had arrived at the scene.
7. PW2 averred that blood was at the scene, and people had gathered. They withdrew and went to the police station in Rumuruti and waited for the military police from Nanyuki, Laikipia. They recorded their statements, and the accused's gun was left at the police station. Further, he stated that when Okul and the accused came back after the shooting, Okul handed him the accused's gun, and he removed the bullets before running to the scene of the shooting.
 8. It was his testimony that he handed it over to the police in Rumuruti. That it had 20 rounds of ammunition, and the accused had used 7. He only found 13 rounds of ammunition. He also recovered seven cartridges at the scene, and Lt. Muhindi took them.
 9. PW3 No. 96783 Private- Obonyo Calvins Okul of 20 Parachute Battalion at Gilgil gave sworn testimony that at the time of the incident, they were based in Muruak Camp, Laikipia West near Rumuruti. He testified they had fetched water from Rumuruti at about 6 am on the material date. Upon arrival at Rumuruti, some officers fetched water, and some went on personal errands. He said he went to get money from a shop when he heard a gunshot. He thought they were under attack, but he met Lomong heading in his direction on coming out of the shop.
 10. It was his testimony that he asked him what the problem was, and he was uneasy. He disarmed him, took the magazine and gun, and decided to take them to the section commander- Cpl. Lel and they took Lomong to Rumuruti Police Station. He stated that the accused had shot children. They confirmed what had happened and found two children on the ground. One was lying on his back and had a gunshot in the eye. He had died. The other was injured on the hip but was breathing. He said the accused did not tell him what had happened, so he disarmed him. He had met him near where the children who were shot were, and he saw the children before he took the gun to Cpl. Lel.
 11. PW3 stated that after taking the gun, he did a safety check. He did not count the ammunition. He heard rapid fire – burst, but he could not tell how many rounds. Ordinarily, the set rifle would have 20 rounds. It was black, and the serial number was H013608. He also confirmed that the gun in court was the one he had taken from the accused.
 12. PW4 Loitiptip Ntilipa Linasotu testified that 29/8/2017 he was in Rumuruti with Lekupuri Leyagu, his uncle. They met two men they did not know but were in green and black. He stated that they had guns, and they started hitting them with the guns. He was hit on the leg, and they shot him in the leg, then they shot Lekupuri in the head. He averred that before shooting them, they said, "Bado wa Samburu wako hapa," that after he fell, people came for him, and he was taken to Nyahururu Hospital.
 13. He testified that he left Lekupuri at the scene when he was collected. He was shot three times in the thigh on both legs, and Lekupuri was shot only once. He identified the accused as the person who shot them and also asserted that he could not see the other attacker in court. He also identified the gun in court as the one that shot them. He also showed his statement, which was signed by his uncle Ambrose Karale Lenasoti, stating that he did not see who shot them, and he reiterated that the attacker's face was visible and not covered.
 14. In a reexamination, PW4 asserted that he was 15 years old in 2017 and did not know that Ambrose had signed the statement for him. He reiterated that he was shot three times and that the attacker's face was exposed.



15. On cross-examination, PW4 stated that he was visiting his grandmother in Rumuruti when one person shot them. They passed them, and then they shot them. He stated that he did not know them, but they were soldiers and were in military uniforms and even headgear. That he fell after he was shot and did not try to protect himself. He stated that he saw the gun when he was lying down and that one of them said in Kiswahili, "Wasamburu wako hapa."
16. PW5 232664 CID James Koech, the investigating officer who was the DCIO Rumuruti when the incident happened, testified that on the material date at 10 am, he heard gunshots and was called by DCIO Josan Mwaria who told him that somebody had been shot at his shop and instructed him to follow up. He then went to the scene near Serena Hotel and found the dead body of a young boy.
17. He stated that KDF officers had conducted the scene. He examined the body and noted that a bullet entered via the deceased's right eye and exited on the back of his head. He was informed that one Sospeter, who was a KDF officer, had shot the boy and also another young boy who had been taken to hospital. He stated that he found six used cartridges at the scene. He testified that he also witnessed the deceased's post-mortem exercise. He produced MFI 1(1) as P Exhibit 1, MFI 2 AS P Exhibit 2, MFI 3 rifle as P Exhibit 3, MFI 4 as Exhibit 4, and MFI 5 as Exhibit 5.
18. PW6 Dr. Miringo testified that he was not the one who did the post mortem but a colleague, Dr. Titus Ngulungu, who he had worked with for many years and was familiar with his handwriting, had done it. He produced the post-mortem report dated 1/9/2017 as P. Exhibit 6. He asserted that the deceased was an African man, a minor noted on observation. The post-mortem report indicated that the deceased died from severe head injury attended by brain laceration and skull due to a single gunshot to the head at close range.
19. PW7 Benjamin Lekitasharana stated that he heard gunshots and people's voices on the material date. He went to the noise source and saw people shouting and two officers in military uniform. That one was saying, "Wacha ni muue". There was a woman who was shouting "Ameua." He went to where she was and saw two people who were children lying down, but one was alive, and he saw blood on her right leg. He took her to the chemist and then to Nyahururu Hospital, where it was confirmed that the bullet had entered through the leg.
20. He testified that when he was on his way to the scene, he met two officers whom he did not know. That one said, "Wacha ni muue.". he asserted that they both had guns and identified MFI 3 as the type of gun they had. He also identified the accused as one of the officers he had seen and stated that he did not see who had killed and shot the two children.
21. PW8 231845 SSP Florence Karemi, DCI Headquarter Ballistics Expert, gave testimony on the exhibits she had been tasked to examine, i.e., one rifle marked exhibit (A), one magazine marked exhibit (A-1), thirteen rounds of ammunition marked exhibits (B1-B13) and six fired cartridge cases marked exhibits (C1-C6) submitted for examination by PC Patrick Wachira from DCI Laikipia. She testified that from her examination, she formed the opinion that confirmed that exhibits (A) and (B1-B13) are firearms and ammunition, respectively, as defined under the Firearms Act. The report dated 16/1/2018 was produced as P. Exhibit 7.
22. PW9 No. 13090 Bernard Nderitu Kariuki from 3rd Kenya Rifle testified that the accused was in his command in Rumuruti. On the material date, while on patrol in Rumuruti town, he was informed of the incident of the two young civilians. He stated that the suspect had already been arrested and informed his senior. There was much chaos in town; he tried to talk to the accused but was in shock. He asserted that he did not find anything at the scene.



Defense Case

23. Placed on his defense, DW1 Sospeter Loming'o Loriu, the Accused person, gave unsworn testimony. He testified that on the material day, he was given escort duties in Rumuruti town, where they were to draw water. There were nine soldiers in total, and Lt. Kariuki was in charge. They left at 8 am in full gear and rifles that had magazines with 100 rounds of ammunition.
24. He testified that they were going for a security operation and were ready for any incident. That the gun was cocked. They arrived safely and drew water. Then they shopped in Rumuruti town with his colleague, Calvins Okul. He patrolled the area, and while he was outside the shop while holding the gun, it accidentally discharged bullets. That the machine gun was automatic, he messed the bolt, and the magazine fell from the gun. He then realized that the stray bullets had hit innocent persons. His colleague took the gun and the magazine from him, and then the team leader questioned him. He was taken to the police station and explained that it was accidental and that he did not know the victims. He stated that he did not know what happened, but he was charged with murder.
25. DW2 Antonella Awanja Lamongo, the accused's aunt who had raised him, testified that the accused was a perfect child of good character and that he used to help at home. She stated that she had heard of the incident and then traveled to the military area in Gilgil and found the accused. She found him in the wrong state. He was crying, confused, and talking to himself. She asserted that the accused came to court and was pleading for forgiveness. He is still seeking pardon and has felt bad due to the incident in which she had taken him to Marsabit Hospital and Mathare due to illness and mental faculty.

Prosecution's Final Submissions

26. On the fact of the death of the deceased, the prosecution submitted that the Information stated that the deceased had been murdered and that his body was also identified by his relatives, who proved that he had died. It was also asserted that PW6 Dr. Miring'u produced the post-mortem form, which confirms that the deceased was dead.
27. On the cause of the death of the deceased, it was averred that the post-mortem report concluded that the deceased had died due to severe head injury attended by brain laceration and skull due to a single gunshot to the head at close range. This was expert evidence regarding the cause of death, and it was neither challenged nor controverted in any way by the defense.
28. On proof that the said unlawful act or omission was committed with malice aforethought, they submitted that the accused person possessed the necessary mens rea to murder the deceased. The prosecution argued that the act of the accused shooting/firing several rounds to the head of the deceased proved that he was aware that when he shot the deceased in the head, he would die. The evidence proved that the rifle he was issued was the one that was used to shoot the deceased.
29. The prosecution submitted that since the accused gave unsworn testimony, it lacked weight and was not persuasive. His defense remains mere assertions and afterthoughts and carries no weight that the prosecution case remains unshaken.
30. Lastly, it was their submission that the prosecution had proved its case beyond reasonable doubt as all significant elements of the offence of murder have been proved and that minor contradictions do not affect the case, and that the accused person ought to face the full force of law to serve as a lesson to all and sundry of such conduct.



Accused Person's Submissions

31. The accused person submitted that it is crucial to point out that during the first day of the trial on 18/10/108, the court, while proceeding to record the evidence of PW2, noticed that the accused was mentally unwell, as a result of which the court ordered a further assessment of his mental health. A second mental assessment concluded that the accused was fit to stand trial, and the bond was reinstated.
32. However, on 27/2/2019, the accused's kin brought to the court's attention treatment documents showing that the accused had been undergoing mental treatment at Mathari Teaching and Referral Hospital, a situation which led the court, a situation which led the court to suspend bond once again and issue an order for the accused to be assessed further and called for a report from Mathari Hospital as evidence of the accused's ongoing treatment. Later, the court received the report, following which it suspended the bond till 25/3/2020 and ordered that the accused be taken to Mathari Hospital until late 2021 when his mental health improved, though he has always been on medication.
33. The accused contended that there were inconsistencies in the prosecution case and that the prosecution and their witnesses did not produce any irrefutable evidence that the accused was assigned the alleged gun and that there were other KDF officers with the same type of rifle as the accused. While they stated that seven rounds of ammunition were emitted from the same gun, only six cartridges were presented in court as having been collected from the scene as having been emitted from the accused's gun. This means that there must have been another KDF officer with the same kind of rifle who shot at least once.
34. It was stated that the investigations were only carried out on one gun allegedly belonging to the accused at the same time of the incident, but no other gun from the other officers was examined. The bullet that is said to have killed the deceased was only one, which means that the said bullet could have come from either of the other similar rifles issued to the other KDF officers. It was asserted that the surviving boy, PW3, testified that they met 2 KDF officers who shot them and that both shot at them. He could not tell their identities since they were in full KDF regalia and had put on head gears; thus, one could not recognize their actual faces.
35. As such, the accused person stated that it would have been prudent for the investigators also to carry out tests on the other similar rifles to be sure that the bullet that killed the deceased would only come from the accused's rifle and to have often hold of the armory records at the Kenyatta Barracks to be sure that the rifle presented had been assigned to the accused and not any officer who was present at the scene. It is convenient for the prosecution and investigator that one cartridge could not be found at the scene. It is common knowledge that the cartridge is emitted near the gun shooting. Therefore, they submitted that the prosecution did not prove that the bullet that killed the deceased was emitted from the gun issued to the accused person.
36. In conclusion, the accused person stated that he is not guilty of murder and that the prosecution did not prove the accused's premeditation; hence, the charge of murder has not been proven. Thus, they beseeched the court to find that the accused was not guilty of murder.

Analysis and Determination

37. The accused person is facing a charge of murder contrary to Section 203 of the Penal Code, which section provides that:

Any person who, of malice aforethought, causes the death of another person by an unlawful act or omission is guilty of murder.



38. Therefore, the elements that have to be proved by the prosecution in a charge of murder are mens rea, that is, the guilty mind, and actus reus, that is, the guilty act that causes the death. The standard of proof required is that of beyond reasonable doubt. In the case of Joseph Kimani Njau v Republic [2014] eKLR, the Court of Appeal stated that-

“In all criminal trials, both the actus reus and the men’s rea are required for the offence charged; they must be proved by the prosecution beyond a reasonable doubt. The trial court is obliged to ensure that before any conviction is entered, both actus reus and mens rea have been proven to the required standard.

39. In Anthony Ndegwa Ngari v Republic [2014] eKLR, the Court of Appeal identified that three crucial ingredients of the offence of murder that have to be proved for a conviction to be entered are as follows:-

For the offence of murder, there are three elements that the prosecution must prove beyond a reasonable doubt 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.

40. Consequently, I will consider these elements of the offence to determine whether the prosecution has proved the charge against the accused beyond a reasonable doubt.

a. Proof of the deceased's death and the cause of that death

41. In the instant case, the deceased’s proof of death and the cause of thereof were undisputed. The same was proven beyond reasonable doubt by the production of the post-mortem form as Prosecution Exhibit 6.PW6 Dr. Miringo, who produced the Deceased's post-mortem report as P. Exhibit 6, testified that the cause of the Deceased's death was a result of a severe head injury attended by brain laceration and skull due to a single gunshot to the head at close range. Further, PW1 and PW5 testified that they witnessed and identified the deceased's body.

b. Proof that the deceased's death was as a result of an unlawful act or omission and whether that unlawful act or omission was by the accused person herein

42. There was sufficient evidence that the deceased and PW4 were shot at, and the deceased died immediately at the scene while PW4 was injured. PW4 asserted that they were shot at as they were on their way to school. There was no evidence that the deceased’s death was self-inflicted or caused by any legally justifiable reason. No person has any right to take away the life of another person except by law provided. Article 26 of *the Constitution* clearly states that every person has the right to life and that a person shall not be deprived of life intentionally except as authorized by law. Accordingly, I find and hold that an unlawful act caused the death of the Deceased.

43. On whether the prosecution proved beyond reasonable doubt that it was the accused who unlawfully killed the deceased, there was an eye witness to the incident. Moreover, there was watertight circumstantial evidence linking the accused person herein to the offence. PW4 testified that he and the deceased were on their way to school on the material day when they met two men they did not know but who were in green and black. He stated that they were carrying guns, and then they started hitting



- them with the guns before they shot at them. PW4 asserted that before shooting them, they said, "Bado wa Samburu wako hapa."
44. It was PW4's testimony that he was shot in the leg, and the deceased was shot in the head. As he was taken to the hospital, he left the accused lying down at the scene of the crime. He identified the accused as the person who shot them and also asserted that he could not see the other attacker in court. He also identified the gun in court as the one that shot them. He reiterated that the attacker's face was visible and not covered.
 45. PW2 testified that they had gone to draw what was in Rumuruti when the incident happened. They had gone with nine other officers, including the accused person, and as they were drawing water, he heard a gunshot. Five minutes later, PW3 and the accused came back, and Okul told him that the accused had killed one person and injured another on the leg. He also handed over the accused's gun, which he disarmed. He ran to the scene and found a deceased child of about 14 years had been shot, but the injured boy had already been taken to hospital.
 46. He averred that PW3 told them that the deceased had been shot in the eye and had died. They then took the accused to Rumuruti Police Station, where they recorded their statements and handed in the accused's gun. He stated that the gun had 20 rounds of ammunition, and the accused had used 7. He only found 13 rounds of ammunition. He also recovered seven cartridges at the scene, and Lt. Muhindi took them.
 47. PW3 stated that when they arrived at Rumuruti, some officers went to fetch water while others went on personal errands. He said he went to get money from a shop when he heard a gunshot. He thought they were under attack, but he met the accused heading in his direction on coming out of the shop. He asked him what the problem was, but he was uneasy. He then disarmed him, took the magazine and his gun, and took them to the section commander PW2.
 48. It was his testimony that the accused had shot children and that what he had heard was rapid fire – burst, but he could not tell how many rounds. He said the accused did not tell him what happened, so he disarmed him. He further asserted that he had met him near where the children who were shot were, and he saw the children before he took the gun to PW2.
 49. PW5, the investigating officer, stated that on the material day at around 10 am, he heard gunshots, and then he was informed that someone had been shot. He then went to the scene near Serena Hotel and found the dead body of a young boy. He stated that KDF officers had conducted the scene. He examined the body and noted that a bullet entered via the deceased's right eye and exited on the back of his head.
 50. He was informed that the accused, who was a KDF officer, had shot the boy and also another young boy who had been taken to hospital. He stated that he found six used cartridges at the scene. He testified that he also witnessed the deceased's post-mortem exercise.
 51. PW7 stated that on the material date, he heard gunshots, and then he heard people's voices. He went to the noise source and saw people shouting and two officers in military uniform. That one was saying, "Wacha ni muue". There was a woman who was shouting "Ameua." He went to where she was and saw two people who were children lying down, but one was alive, and he saw blood on her right leg. He took her to the chemist and then to Nyahururu Hospital, where it was confirmed that the bullet had entered through the leg.
 52. He testified that when he was on his way to the scene, he met two officers whom he did not know. That one said, "Wacha ni muue.". he asserted that they both had guns and identified MFI 3 as the type of



gun they had. He also identified the accused as one of the officers he had seen and stated that he did not see who had killed and shot the two children.

53. PW8, who conducted the ballistics examination on the suspected murder weapon, i.e. one rifle marked exhibit (A), one magazine marked exhibit (A-1), thirteen rounds of ammunition marked exhibits (B1-B13), and six fired cartridge cases marked exhibits (C1-C6), testified that from her examination she formed the opinion that confirmed that exhibit (A) and (B1-B13) are a firearm and ammunition respectively as defined under the [Firearms Act](#). The report dated 16/1/2018 was produced as P. Exhibit 7.
54. PW9 testified that the accused was in his command in Rumuruti. On the material date, while on patrol in Rumuruti town, he was informed of the incident of the two young civilians. He stated that the suspect had already been arrested and informed his senior. There was much chaos in town; he tried to talk to the accused but was shocked. He asserted that he did not find anything at the scene.
55. Accordingly, PW4 is the sole eyewitness of the crime. The evidence of PW4 placing the accused at the scene of the murder is, therefore, that of a single identifying witness. As held in *Abdalla Bin Wendo & Anor v. R (1953) 20 EACA 166* :-

“Subject to certain well-known exceptions, it is trite law that the testimony of a single witness may prove a fact, but this rule does not lessen the need for testing with the greatest care the evidence a single witness respecting identification, especially when it is known that the conditions favoring a correct identification were difficult. In such circumstances, what is needed is other evidence, whether it be circumstantial or direct, pointing to guilt, from which a judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness, can safely be accepted as free from the possibility of error.”

56. Further, in *Wamunga v Republic [1989] KLR 424*, it was stated that:

“It is trite law that where the only evidence against a defendant is evidence of identification or recognition, a trial court is enjoined to sift through such evidence and to be satisfied that the circumstances of identification were favorable and free from the possibility of error before it can safely make it the basis of a conviction.”

57. That being the case, this court is cautious of the danger of relying on a single witness. This court is cognizant that even without corroboration, the trial court can convict an accused person so long as it is satisfied with the quality of the evidence of the single witness, especially regarding the witness' truthfulness. I find PW4's evidence to have been honest, truthful, and credible. The attack happened during the day at around 10 am; therefore, the conditions favoring the correct identification of the accused as the attacker was present. PW4 was also a victim of the attack, and it was only by sheer luck that he did not lose his life on that day. I believe that he was able to see the accused clearly because of the close-range shooting, and the witness stated that his face was not covered and thus was visible.
58. Notwithstanding, there is plenty of circumstantial evidence pointing to the accused's guilt form, and I can reasonably conclude that the accused was positively identified as the deceased's attacker. PW2, PW3, PW5, and PW7 all testified that they had heard the gunshots. Most crucial was the evidence of PW3, who had gone to run errands, who testified that immediately after he heard gunshots, he saw the accused running from that direction. He then disarmed the accused, and upon asking him what had happened, he looked uneasy. He also asserted that he had met him near where the children who were shot were and that he saw the children before taking the gun to PW2. PW2 corroborated his evidence



and confirmed that PW3 brought the gun to him and that they made their way to the scene of the crime and found the deceased lying down. They then took the accused to Rumuruti Police Station.

59. Furthermore, the evidence of PW8 forensically tied the case together as she testified that from her examination, she formed the opinion that confirmed that exhibit (A), i.e., the gun that was in the accused's possession and (B1-B13) are a firearm and ammunition respectively as defined under the *Firearms Act*. I believe that the circumstances taken cumulatively 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 no one else.
60. Because of the defense by the accused person, I find that any minor contradictions and inconsistencies present in the prosecution's case did not in any affect the strength of their evidence or displace the fact that the accused occasioned the unlawful act that led to the deceased murder. I would also like to point out that there was no evidence to prove that the accused person was insane when he committed the offence. His defence was untruthful and raised no doubts about who committed the heinous crime.

c. Proof that the accused had malice afterthought

61. Malice aforethought is deemed to be established by evidence proving any one of the following circumstances provided for under Section 206 of the Criminal Procedure Code, which states as follows:-
- (a) An intention to cause the death of or to do grievous harm to any person, whether that person is the person killed or not
 - (b) The knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person 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 happen.
 - (c) An intent to commit a felony
 - (d) An intention by the act or omission to facilitate the flight or escape from custody or any person who has committed or attempted to commit a felony.
62. Further, in *Nzuki vs. Republic* [1993] KLR 171, the Court of Appeal held that before an act can be murder, it must be aimed at someone, and in addition, it must be an act committed with the following intentions, the test of which is always subjective to the actual accused. Intention to cause death Intention to cause grievous bodily harm Where the accused knows that there is a risk that death or grievous bodily harm will ensue from his acts and commits them without lawful excuse.
63. In the case of *Daniel Muthee vs. Republic* Criminal Appeal No. 218 of 2005 (UR) cited in the case of *Republic vs. Lawrence Mukaria & Another* [2014] eKLR, the court, while considering what constitutes malice aforethought, observed as follows:-
- “When the appellant set upon the deceased and cut her with a panga several times and then proceeded to cut the young Allan similarly, he must have known that the act of cutting the deceased persons on the head with a sharp instrument would cause death or grievous harm to the victims. We are therefore satisfied that malice aforethought was established in terms of Section 206(b) of the Penal Code.”
64. Consequently, when the accused person pointed the gun at the deceased head and proceeded to shoot, there was no doubt that his intention was either to grievously harm or kill the deceased as he did. The



helpless young victim did not stand a chance. He died immediately as a result of the accused's attack. He also used the same gun to shoot another victim, who luckily survived the attack. Additionally, the words he uttered, which can be inferred as tribalistic sentiments before shooting at both the deceased and PW3, aggravate the situation further. The fact that the accused was a KDF officer makes it even worse. He had the duty to protect the deceased, but he selfishly caused his untimely death. Therefore, I conclude that the prosecution proved that the accused person had the necessary malice aforethought.

65. In the premises, I am satisfied that the ingredients of the offence of murder have been proved beyond reasonable doubt against the accused. Thus, I make the orders;
- i. I find and hold that the accused person herein, Sospeter Lomong'o Loriu, is guilty of the murder of Lekupuri Leiyagu, the deceased herein. He is convicted accordingly.

DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 21ST DAY OF DECEMBER 2023

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C KARIUKI

JUDGE

