



**Republic v Mugambi (Criminal Case 29 of 2016)
[2022] KEHC 10010 (KLR) (31 March 2022) (Judgment)**

Neutral citation: [2022] KEHC 10010 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 29 OF 2016
EM MURIITHI, J
MARCH 31, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

FRANCIS MUGAMBI ACCUSED

JUDGMENT

1. The accused was charged with the offence of murder contrary to section 203 as read with 204 of the [Penal Code](#) with the particulars that he had on the February 4, 2016 at around 0700 hrs at Athiru village Location of Igembe North Sub-County within Meru County murdered Robert Mwenda.
2. The Prosecution called five (5) witnesses whose evidence is set out in full below:

“PW1 Ezekiel Kamenchu. I reside at Mkanda-antu-amburi Laare. I am a miraa dealer. I buy from the miraa farms. I take for sale at Maua.

On 4/2/2016 at 7.00 a.m. I had gone to look for miraa to buy in a shamba at Meme's place. Meme had told me to go and see the miraa for buying. As I had gone into the shamba, I heard screams at the road. I was alone in the shamba. I heard screams someone was saying in kimeru that he should not be killed. Uuuu usiniue. (Do not kill me.)

It is about (5) metres, there is only a fence between the place where I was and the road. When I went to see what was going on I found Francis the accused beating Mwenda, Mwenda is the deceased.

I saw Francis beating Mwenda by his leg and by a fist to the face. Mwenda fell to the ground. Francis hit Mwenda with his leg on the stomach. When Mwenda fell on the ground, I saw him bleeding on the mouth. Francis took the miraa which Mwenda was carrying. I told the owner of the shamba about the incident. I left Mwenda on the ground and I went to tell



Meme. I found his wife and she said she could not go to see a person who was bleeding. I then went out and met a child who told me that he had heard that Mwenda had died. I pointed Mwenda to him and left on my way.

Francis is known to me. We normally meet on the road while I was going for my miraa. I had known him for many years of about 20 years since I began my miraa dealings in 2000.

Mwenda was also known to me as he was a miraa picker with whom I worked. I later recorded my statement at Laare police station. That is all.

Cross Examined by Mr. Mutegi for Accused

I have told the truth. I have not read the statement today. I signed the statement. Before I recorded the statement the police asked me questions when I was recording my statements. After writing the statement I signed the statement. The statement was not read to me when the officer finished writing. I do not know the officer's name.

I was at Meme's shamba. I do not know where Meme was. I had been taken there by the person he had rented to. It was one acreage. The one who referred me the shamba was Kithinji. He sent me to the shamba saying he had seen miraa in the shamba. I saw Francis beating the deceased.

Kawira

I know Kawira. I saw her that day. She was at the scene. She was crying. She was present when Mwenda was being beaten. I did not talk to Kawira. Gedion Baariu - he had been called by Kawira. Kawira called Baariu. I did not see Kawira call Baariu.

I did not tell the police that I had seen Kawira at the scene. From 2016 to date I have not told anyone that Kawira was there. I had not been called.

It was on 4/2/2016 when Francis killed Mwenda.

It is my evidence that at the scene I saw Kawira. I did not talk to Kawira. There were many people. I went to the police where Mwenda had fallen. It was the first time to see Kawira. I did not know Kawira before then.

(Witness is referred to his statement that he went back to the shamba and later called to Laare Police station)

It is true as recorded in the statement.

I did not meet Meme. I found my wife and told her that Mwenda was dead on the road. This is not in the statement. The child is Kawira. She is the one I met. She was about 21 years. I am old man.

The child is Kawira. We met at the scene. The accused had taken the miraa and left. I do not know who else could have seen Francis beating Mwenda.

I am 40 years. I know a person should report such an offence of killing a person. I saw that the report had been made and I left it at that. I saw Baariu when he had come after he was called by Kawira. I was going on my duty and I left him there. I told him that Francis was beaten.

I told Kawira that Francis had beaten Mwenda. I also told Baariu that Mugambi and Mwenda had fought but I did not know why they fought. I saw Mugambi (Francis) run away. When Mugambi ran away Kawira was just approaching. I saw Kawira. Baariu was not there when Mugambi was beating. Mugambi and I have no grudge.



I however tried to be a witness against Mugambi in a murder case and am witness. I do not know Kirimi Nasilimo Mbuthu.

Re Examination

Nil.

PW 2 I am Gedion Baariu. I live in Igembe central. I work in miraa business. I buy and sell miraa at Maua.

On 4/2/2016 at 7.00 a.m. I was at home. I was called Julie Kawira while she was crying.

She was at my home outside the door. She said she had left Robert Mwenda on the road at SDA School along a junction of three roads one heading Athiru market, SDA primary and Karanga primary school.

I went to the scene with Kawira and saw the body. I saw that Mwenda had fallen and was lying on his back facing up. There was blood and few Miraa around. I called the chief Joshua Mungathia of Rithara location. I called the chief who called police officers from Laare. The police came. I was around. I saw the police come and examine the body. They saw the injury on the body and they took the body to Laare Police station on the way to Meru general hospital.

I know Robert Mwenda. I am his uncle. On 16/2/2016 I went to the mortuary for the post mortem examination. I was with Mwenda's brother Cyprian Mithika. We witnessed the post mortem.

The doctors conducted the post mortem and I later recorded my statement. I know the accused as a neighbor. I have known the accused for 35 years since childhood. I am 40 years old. That is all.

Cross Examination by Mr. Mutege for Accused.

I recorded my statement on 16/4/2021. (witness is shown the statement) this is my signature.

I did not see the accused beating the deceased. I was told.

I saw the area on which preparing miraa. I did not see him near the body of the deceased.

Re-examination By DPP

Nil.

PW 3 I am Juliet Kawira. I reside at Atheru. I finished my forth form in 2021. In 2016, I was 14 years. I was in class 8. I schooled SDA Athiru Primary school.

On 4/2/2016 at 7.00 a.m. I was going to School. I was alone. I reached a junction near the school, SDA Primary school. I found Robert Mwenda, my cousin lying on the road side on the ground. He had blood on the mouth. There was miraa stems around the area. I saw Francis collecting the miraa where Mwenda was lying. Francis was collecting the miraa on to his one hand. Francis is my neighbor. It is about 15 metres from our home to the home of Francis. Francis is the accused (points). I have known since I was born in 2002.

I was just about 1.5 metres away of where Francis was collecting the miraa and where Mwenda was lying. Francis was shaken to see me. As I stood there I heard someone coughing from a neighbouring shamba and I ran away and told my uncle Gedion Baariu. From the



place the body was to my uncle's home is about (8) metres. When I found my uncle asleep I woke him up by calling "Uncle Uncle" and I told him what I had seen on the road side. I was in a shaken state at the time I was calling my uncle. He woke up and we went back to the place where Mwenda was lying on the ground.

When he reached the scene Francis was not at the scene but there were other persons. I later recorded my statement.

Cross Examination By Counsel for Accused Mr. Mutegi

I called my uncle and went with him to the place where the body of my cousin was.

When we went back there were many people at the scene. I did not hear of call the chief.

I heard someone coughing in a neighbouring shamba and I ran away. I only found Francis at his area chief's miraa. He is the only one I found at the scene. I did not see anyone beat my cousin Mwenda. I did not see Francis hit the deceased. He is the only one I found at the scene.

I know Ronald Meme. He is the owner of the shamba where I heard someone cough. I know Ronald is at home. I do not know why he has not come to court today.

Re-examination

Nil.

PW4 Dr. Seth Mwenda Maore. I am Bachelor of medicine and surgery Egerton University. I work at Meru teaching and referral Hospital. I have worked there for three years. I know Dr. Paul Wambugu. I worked with him for 2 months when he was transferred. I know his handwriting and signature. I see his handwriting and signature in the post mortem report before the court.

Post mortem was done on 16/2/2016 on body of Robert Mwenda at Meru teaching and referral hospital on 16.00 hours.

General observation

No clothing, African male of apparent age of 34 years in good nutritional status moderate built, height 181 cm. Body preserved in formalin.

External appearance

Bleeding off nose. Blunt face trauma on the left hypochondria region (below the chest)

Respiratory system was normal

Cardiovascular system shattered a rupture spleen with blood on the abdomen. Urinary system normal.

Head and nervous system were normal.

Spinal column and cord were normal.

Cause of death was internal bleed secondary to blunt abdominal trauma.

I wish to produce report as exhibit.

At post mortem report dated 16/2/2016 as P exhibit No. 1.

Cross Examined by Mr. Mutegi

Blunt object injury. It could be a motor cycle or motor vehicle.



Re-examination.

Nil.

5 No. 79909 P.C Kanampiu James. I am deployed at Laare Police station. The investigating Office was P.c Jefferson Elija. He is on a 3 months operation at Boni forest.

I have worked with Jefferson Elija even at the time of the incident. We worked together for 3 years before he was transferred.

I pray to testify on his behalf. On 4/2/2016 I was at the police station when a relative to deceased Gideon Baariu who is the uncle came at the station and reported that his cousin Robert Mwenda had been killed. The O.CS then William Matu and Police Officer Jefferson went to the scene at Athiru village Igembe North sub County. On the road near Athiru on the way found the body lying on the road.

According to the report the deceased was bleeding of the mouth. They took his body to Meru levelS hospital mortuary.

On 16/2/2016, I was sent by the OCS together with the deceased's relatives to come to the hospital when Dr. Wambugu performed post mortem examination after body identification by the relative Gideon Mbariu.

The investigating officer opened a file and took statements and at the time the accused then ran away and was on the 20/5/20216 when he was arrested at Maili tatu township in Igembe Central sub county.

After the investigations the accused was charged. The person arrested on 20/5/2016 is the accused. He was brought to the station while I was at the station.

Cross Examination from Mr. Mutegi for Accused

No questions.”

3. At the close of the case for the Prosecution, counsel for the defence indicated that he wished to, but eventually did not, make any submissions, and the Counsel for the DPP relied on the evidence adduced before the court.

Issue for Determination

4. In accordance with the section 306 of the *Criminal Procedure Code*, the court is at the stage of close of the Prosecution evidence required to make a determination on case to answer in terms as follows:

“ 306. Close of Case for the Prosecution

- (1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.
- (2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person



of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact

- (3) If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon him to enter upon his defence.

[Act No. 33 of 1963, First Sch., Act No. 20 of 1965, s. 33, Act No. 5 of 2003, s. 86”

Determination

5. The Court has considered the evidence presented by the prosecution in this trial, and at this stage of decision on case to answer pursuant to section 306 (1) of the [Criminal Procedure Code](#), finds that the evidence is not sufficient to call upon the accused to make his defence, there being not established a *prima facie* case within the meaning of *Ramanlal Trambaklal Bhatt v. R* (1957) EA 332.

The Evidence

6. The evidence of the Prosecution was that PW1, a miraa dealer who knew both the deceased and the accused, respectively as miraa picker and dealer, testified that on 4/2/2016 at 0700 am while on his way to buy miraa at a shamba he was attracted to the scene by screams coming from the adjacent road and witnessed the accused beating the deceased –

“When I went to see what was going on I found Francis the accused beating Mwenda. Mwenda is deceased. I saw Francis beating Mwenda by his leg on the stomach and by a fist to the face. Mwenda fell to the ground. I saw him bleeding on the mouth. Francis took the miraa which Mwenda was carrying. I told the owner of the shamba about the incident. I left Mwenda on the ground and I went to tell Meme [owner of the shamba]. I found his wife and she said she could not go to see a person who was bleeding. I then went out and met a child who told me that she had heard that Mwenda had died. I pointed Mwenda to her and left on my way.”

7. On cross-examination PW1 said the child he met at the scene was Kawira (PW3) who he was seeing for the first time and that he had “told Kawira that Francis had beaten Mwendwa. I also told Baariu (PW2), (who he said he saw when he was called by Kawira), that Mugambi and Mwenda had fought but I did not know why they fought. I saw Mugambi (Francis) tun away. When Mugam bi ran away Kawira was just approaching.” PW2 also said Baariu who he said was called by Kawira was not there when Mugambi was beating the deceased.
8. PW2, the deceased’s Uncle said that he was at home on 4/2/2016 at 7.00am when he was called by Julie Kawira who had come to his home, and while crying had told him that “she had left Robert Mwenda on the road at SDA School junction”, and when he went to the scene had seen the body “lying on his



back facing up [and] there was blood and a few miraa around.” On cross-examination PW2 confirmed that “I did not see the accused beating the deceased.”

9. PW3 Juliet Kawira testified that in 2016, then 14 years old she was at class 8 pupil at SDA Athiru Primary school, and that on 4/2/2016 at 7.00am while going to school alone she had found her cousin Robert, the deceased herein lying on the road:

“I reached a junction near the school, SDA Primary School. I found Robert Mwenda, my cousin lying on the road side on the ground. He had blood on the mouth. There was miraa stems around the area. I saw Francis collecting the miraa where Mwenda was lying. Francis was collecting the Miraa on his one hand.”

10. PW3 said that she had known Francis since she was born in 2002 as a neighbour whose home was just about 15 meters from her home. She described her encounter with Francis at the scene as follows:

“I was just about 1.5 metres from where Francis was collecting the Miraa and where Mwenda was lying. Francis was shaken to see me. As I stood there I heard someone coughing from a neighbourhood shamba and I ran away”

11. PW4 Dr Seth Mwenda Maore presented the post-mortem report by Dr Paul Wamugu that the deceased’s external appearance as “bleeding from the nose. Blunt force trauma on the left hypochondria region (below the chest” and on the cardiovascular system “shattered ruptured spleen with blood in the abdomen.” Cause of death was given as “internal bleeding secondary to blunt abdominal trauma.” PW4 on cross-examination said the deceased had suffered “blunt force injury [and] it could be a motor cycle or motor vehicle.”

12. PW5 the Investigating Officer testified that a report had been received at the police station “On 4/2/2016 ... when a relative of the deceased Gideon Baariu who is he uncle came at the station and reported that his cousin Robert Mwenda had been killed.” He testified that the police had gone to the scene at Athiru village Igemebe North Sub-County where they found the deceased’s body lying on the road, bleeding from the mouth, and that the accused had ran away after the incident and was on 25/5/2016 arrested at Maili Tatu township.

Analysis of Evidence

13. PW3 a child of 14 years did not runaway to report the incident of his cousin lying apparently dead on the road but from the sound of someone coughing in a neighbouring shamba. It is not believable, there must some explanation which has been withheld. The behaviour of PW1 on witnessing the killing that he had just pointed the child to where the body lay and left on his way without any report on the matter save he report he made to the shamba’s owner wife, is not a realistic normal reaction to a situation of discovery of a serious crime as that of killing, and the court takes it that eh witness PW1 did not tell the whole truth.
14. There is glaring inconsistencies in the evidence of the two self-styled eye-witnesses, PW1 and PW3. PW1 said the child Kawira only came to the scene after the Mugambi the accused had ran away. PW3 said she came upon the body of her cousin Mwenda and found Francis the accused collecting miraa from around where the deceased was lying. She further said that she heard some cough from a neighbouring shamba, (presumably PW1 in Meme’s shamba), and she fled and went to report to her uncle the PW2. She had no opportunity to meet the PW1.



15. Yet PW1 went into detail how he had seen Kawira PW3 that day and told her and Baariu PW2 that the accused had beaten the deceased. He said on cross-examination:

“Kawira

I know Kawira. I saw her that day. She was at the scene. She was crying. She was present when Mwenda was being beaten. I did not talk to Kawira. Gedion Baariu - he had been called by Kawira. Kawira called Baariu. I did not see Kawira call Baariu.

I did not tell the police that I had seen Kawira at the scene. From 2016 to date I have not told anyone that Kawira was there. I had not been called.

It was on 4/2/2016 when Francis killed Mwenda.

It is my evidence that at the scene I saw Kawira. I did not talk to Kawira. There were many people. I went to the police where Mwenda had fallen. It was the first time to see Kawira. I did not know Kawira before then.

(Witness is referred to his statement that he went back to the shamba and later called to Laare Police station)

It is true as recorded in the statement.

I did not meet Meme. I found my wife and told her that Mwenda was dead on the road. This is not in the statement. The child is Kawira. She is the one I met. She was about 21 years. I am old man.

The child is Kawira. We met at the scene. The accused had taken the miraa and left. I do not know who else could have seen Francis beating Mwenda.

I am 40 years. I know a person should report such an offence of killing a person.

I saw that the report had been made and I left it at that.

I saw Baariu when he had come after he was called by Kawira. I was going on my duty and I left him there. I told him that Francis was beaten.

I told Kawira that Francis had beaten Mwenda. I also told Baariu that Mugambi and Mwenda had fought but I did not know why they fought. I saw Mugambi (Francis) run away. When Mugambi ran away Kawira was just approaching. I saw Kawira. Baariu was not there when Mugambi was beating.”

16. On cross-examination, PW3 confirmed that other than Francis and the person she heard coughing in the neighbouring shamba and ran away there was no one else at the scene, as follows:

“I hear someone coughing in a neighbouring shamba and I ran away. I only found Francis at the Area Chief’s miraa. He is the only one I found at the scene. I did not see any one beat my cousin Mwenda. I did not see Francis hit the deceased. He is the only one I found at the scene.”

17. PW1’s testimony is self-contradictory. While early on in cross-examination he says he did not talk to Kawira who was at the scene when Mwenda was being beaten, he later on states that he is the one who told Kawira and her uncle Baariu that Francis had beaten the deceased and that the accused had run away before Kawira came to the scene:

“I saw Baariu when he had come after he was called by Kawira. I was going on my duty and I left him [deceased] there.



I told Kawira that Francis had beaten Mwenda. I also told Baariu that Mugambi and Mwenda had fought but I did not know why they fought. I saw Mugambi (Francis) run away. When Mugambi ran away Kawira was just approaching. I saw Kawira. Baariu was not there when Mugambi was being beating [the deceased].”

18. If Kawira PW3 was present when the accused was beating the deceased as alleged by the eye –witness PW1, it would not have been necessary to tell her that Francis had beaten Mugambi and that they had fought but he did not know why they fought. Kawira would have been an eye witness to the fighting and beating, something in her own testimony she did not witness. PW1 could not explain on cross-examination why he had not recorded that fact that Kawira was at the scene or told anyone about it since 2016 when the killing happened.

Single Identifying Witness

19. On the evidence presented by PW3, if she were to be believed, the accused could only be convicted of collecting miraa on the scene, if the miraa did not belong to him. PW3 did not see the accused or anyone hit the deceased.
20. The evidence of PW1 placing the accused 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 a fact may be proved by the testimony of a single witness 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 favouring a correct identification were difficult. In such circumstances what is need is other evidence, whether it be circumstantial or direct, pointing to guilt, from which a judge or jury can reasonably concluded 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.”

21. The offence is alleged to have been committed at 7.00am in the morning, according to PW1. It is also the time when PW3 came upon the body of her cousin lying on the ground and the Accused picking a few miraa stems around the scene. The beating alleged by PW1 must have started earlier and taken some time for it to lead to the killing of the deceased before the school girl PW3 stumbled upon the body at 7.00am. It is also the time when the uncle of the deceased says he was called out by the child PW3 and told of the body of the deceased lying on the road.
22. The beating and killing must have happened earlier than 7.00am and there is no indication as to the lighting at the time as to support correct identification. PW1 suggested that he saw through the fence between the road and the Meme’s shamba where he was assessing the miraa crop as follows:

“On 4/2/2016 at 7.00am I had gone to look for miraa to buy in the shamba at Meme’s place. Meme had told me to go and see the Miraa for buying. As I had gone into the shamba, I heard screams at the road. I was alone in the shamba. I heard screams someone saying in Kimeru that he should not be killed: “Usinue Usinue”. (Do not kill me).

It was about (5) metres, there is only a fence between the place where I was and the road. When I went to see what was going on I found the accused beating Mwenda.”



23. The circumstances of identification do not appear very conducive bearing in the mind the time before 7.00 am and blocked view and the court must give the benefit of the doubt as to the conditions favouring identification to the accused.
24. The court has taken caution to look for corroboration of the evidence of PW1 identifying the accused as the killer of the deceased and has found none. The evidence of PW3 merely implicates the accused for being at the scene, picking some miraa on one hand and looking shaken when he saw the child. No corroboration on material fact of beating the deceased to his death.

Ingredients of the offence of murder

25. As the prosecution had not proved that the accused committed the act that caused the death of the accused, the further inquiry as to the necessary mens rea does not arise. In terms of section 306 (1) of the *Criminal Procedure Code*, there is consequently, no evidence that accused and or others caused committed the offence of murder as charged.
26. All the evidence proved was the fact of death but not the other ingredients of the offence of murder, namely, the act of the accused caused the death and that the accused was driven by malice aforethought. See section 203 of the *Penal Code* and Etyang, J. in *R v. Nyambura & 4 Others* [2001] KLR 355 and *R v. Gachanja* [2001] KLR 428. There was, in law, no evidence that the accused committed the offence of murder as charged.

Conclusion

27. PW1 the only eye-witness to the alleged beating was not a witness of truth: his evidence is irrational, self-contradictory and unsupported by any other material evidence as required for evidence of single identification witness. See *Abdalla bin Wendo & Anor. v. R* (1953) 20 EACA 166. It would not surprise the court that the witness was himself an accomplice in the beating of the deceased. That is why he struggled with the reasonable question why he did not report the very matter of the killing to the police having witnessed the beating unto death of the deceased. And of failure to record with the police as to the presence at the scene of another eye-witness, child Kawira PW3. The court gets the feeling that the PW1 as the lead witness was at the hearing conjuring the facts to fit the offence and guilt of the accused.
28. The wife of the owner of the miraa shamba where PW1 was allegedly checking for miraa, was not called as a witness to confirm the report to her by PW1 of the alleged beating by deceased by Francis the accused herein. Neither was her husband Ronald Meme whose availability was confirmed by PW3 on cross-examination called to testify on any relevant dealings on the morning of 4/2/2016 with PW1 as would confirm the latter's testimony.
29. In the circumstances of this case, the court feels justified to invoke the adverse inferences of criminal justice in *Ndungu Kimanyi v. R* (1976-80) KLR 1442 that "the witness in a criminal case upon whose evidence it is proposed to rely should not create an impression on the mind of the court that he is not a straightforward person, or raise a suspicion about his trust-worthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore, an unreliable witness which makes it unsafe to accept his evidence" and in *Bukenya v. Uganda* (1972) EA 349 that "where the evidence called is barely adequate, the Court may infer that the evidence of uncalled witnesses would have tended to be adverse to the prosecution."
30. No exhibits were recovered as to killer weapon in view of the medical evidence suggesting blunt force trauma equivalent to a hit by a motor cycle or motor vehicle. PW1 said the accused beat the deceased by



only his legs to the stomach and fist on the face. The court must ask whether the nature of the beating described by the eye-witness PW1 could result in the instantaneous death of the deceased. The alleged act of the accused beating the deceased by legs and fist, even when proved which was not the case here, was not shown to be the cause of death.

31. As the killing of the deceased by the accused has not been proved to the required standard of beyond reasonable doubt there is no occasion for inquiry on the third ingredient of the offence of murder, namely that the accused killed the deceased with malice afore thought. The accused cannot be found guilty of the offence of murder contrary to section 03 as read with 204 of the [Penal Code](#).

Orders

32. Consequently, the Court having found in the terminology of section 306(1) of the [Criminal Procedure Code](#) “that there is no evidence that the accused or any one of several accused committed the offence”, therefore, enters a finding of not guilty for the accused on the murder charge contrary to section 203 as read with 204 of the [Penal Code](#). The accused is accordingly acquitted.
33. As the accused has been out on bond pending trial, the bond and surety shall be discharged and the security returned to the depositor.

Order accordingly.

DATED AND DELIVERED THIS 31ST DAY OF MARCH 2022.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mutegi for for the Accused.

Ms. Kitoto for the DPP.

