



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL CASE NO. 41 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DAVID KANYI *alias* DAVI.....ACCUSED**

**JUDGMENT**

1. On 23<sup>rd</sup> October, 2017 the charge of murder contrary to Section 203 as read with Section 204 of the Penal Code was read out to the accused person, David Kanyi *alias* Davi. The particulars of the charge were that on the 2<sup>nd</sup> day of October, 2017 at Makupa Police Lines in Mombasa City within Mombasa County in the Republic of Kenya, he murdered Joy Wangari Wanja. The accused person pleaded not guilty. The prosecution called 12 witnesses in support of its case.

2. PW1 was Francis Kiarie Kamanu. He testified of how on 1<sup>st</sup> October, 2017 he was with his sister Florence Wanjiku and her husband Albert (PW2) at their house at Bamburi. PW1 stated that he was visiting Florence (PW7) and had stayed in her house for a month. That they called their sister by the name of Judy Wangari whom they requested to visit them. He stated that at 11:00p.m., Judy told them she wanted to leave and they boarded PW2's car for Makupa Police Station, as Judy used to live in the Police Lines with her boyfriend whom he referred to as Davi. PW1 identified the said boyfriend as the accused person.

3. It was PW1's evidence that on reaching the Police Lines, he escorted Judy to the accused person's house, who asked them why they were late. PW1 further stated that the accused person told Judy that she was not going to sleep in his house but she insisted that she would sleep there. That the accused person threatened to take Judy to the cells and held her hand as if he wanted to take her there, but he did not.

4. PW1's testimony was that the accused person and Judy went back to the house as he followed them. PW1 testified that the accused person started throwing out Judy's clothes from the house. PW1 identified the said clothes, assorted items and shoes in Court. He stated that as the said clothes were being thrown out, Judy was pleading with the accused person by telling him that if he loved her, he should stop throwing her items outside. PW1 stated that the accused person locked himself inside the house and that Judy refused to accompany him to PW7's house, and told him to leave as the accused person would open for her after he had gone. That PW2 called him and asked him why they were taking so long and he told him that there was a disagreement between the accused person and Judy.

5. PW1 testified that the following morning at 6:00a.m., the accused person called PW7 and told her to go to Makupa Police Station. That PW1 accompanied PW7 to the said Police Station where they were told that Judy was in the mortuary after committing suicide.

6. PW2 was Albert Katembo Vagheni a resident of Bamburi. He was the husband of PW7, Judy's sister. His evidence was that on 1<sup>st</sup> October, 2017 at 6:00p.m, they called Judy and asked her to visit them at Bamburi. PW2 stated that she reached there at 6:30p.m. and at 9:00p.m, he told her to go home as it was late but she said she would stay on. PW2 stated that at 11:00p.m, he told her to go home as it was late and her boyfriend was a Police Officer. PW2 indicated that he took Judy to Makupa Police Lines in the company of her brother. He stated that she and her brother Francis (PW1) went into the compound and after 30 minutes he became impatient and he dialed her phone. That Patrick took the call and told PW2 that there was a disagreement between Judy and the accused person. PW2's evidence was that he told PW1 that if there was a problem, Judy should go to PW2's home but PW1 told him that Judy had said that they would resolve the problem. That 15 minutes later, PW1 went back alone and told him that Judy would resolve the issue with the accused person. He stated that he and PW1 left for his home and that the following morning his wife's sister asked him to go to Makupa Police Station, where they were told that Judy was in the mortuary.

7. PW3 was PC Patrick Muriuki attached to Makupa Police Station. His evidence was that on 1<sup>st</sup> October, 2017, he was on duty at a road block at Makande as from 6:00 p.m., to 2:00 a.m. That in the morning of 2<sup>nd</sup> October, 2017 at 2:20 a.m., when going to Makupa Police Lines, before he passed by the accused person's house, he stepped on a plastic container. PW3 stated that he shone his torch and saw that it was a bottle of a lady's moisturizer. He then saw a lady hanging from a curtain that was fixed to the door. He explained that one part of the curtain was closed in, on the inner part of the door to the accused person's house, and another part of the curtain was around the woman's

neck with a knot tied around the curtain. PW3 stated that the woman's head was facing upwards and she appeared as if she was kneeling at the door.

8. PW3 stated that he raised Sergeant (Sgt) Paul Chai whom he had been on duty with and told him what he had seen. That the said Sgt. Chai raised the duty officer Corporal Keziah, and after the two reached the scene, PW3 went to his house. PW3 stated that the door of the house where he found the woman hanging from belongs to the accused person. On being shown the photograph marked as MFI - 4, PW3 stated that it was a picture of the woman who was hanging on a curtain outside the accused person's house. He further stated that he used to see the woman at the accused person's house.

9. PC Jeremy Levis Malova testified as PW4. He stated that on 2<sup>nd</sup> October, 2017 at 12:30a.m., he went home after doing patrol duties within Makupa area. His evidence was that after some time, he heard the accused person quarreling as he told Judy to go back where she had come from. PW4 stated that he could hear the voice of another man interjecting and he could hear the conversation going on as he lives in the 2<sup>nd</sup> house after the accused person's house.

10. PW4 testified that he heard the other man telling Judy that they should go home and that they could go to the accused person's house the following morning. PW4 stated that he heard the said person telling a third person on the phone that he had told Judy that they should go home and go back the following day. PW4 also stated that Judy told the said man to leave her as she would be okay. It was PW4's evidence that he then heard the sound of things being thrown outside and heard the sound of the accused person's house being locked. He stated that he could hear the sound of Judy knocking at the door for about 15 minutes and then he slept.

11. PW4 stated that at about 2:00 a.m., PC Joseph Letio woke him up and told him that Judy had hang herself. That he went to the scene and saw that there were 2 pieces of curtain tied around her neck, with a knot on one end. He stated that her legs were dangling on the floor and her hands were also dangling. That her head was dangling on one side. He stated that after sometime PC Keziah, the duty officer, PC Kinyua and Inspector Yator went to the scene. PW4 stated that PW3 and PC Letio were also at the scene and the accused person was in his house.

12. PW 4 stated that the scenes of crime officers were called from Urban Police Station (Division) and took photographs at the scene. That the body of Judy was removed from the scene. It was PW4's evidence that outside the accused person's house, he saw clothes strewn all over. He identified an orange bag containing assorted clothes as well as other personal effects of the Judy (deceased). PW4 stated that he knew the deceased as a girlfriend to the accused person and that the two used to live together.

13. CPL Keziah Kalayu of Makupa Police Station testified as PW5. It was her evidence that on the night of 1<sup>st</sup> October, 2017 and 2<sup>nd</sup> October, 2017 she was the duty officer and that at 2:30 a.m., she was on patrol duties with PC Ashford Kinyua and PC Elkana Ruto. She stated that she was raised by the officer in charge of Makande road block Sgt. Paul Chai who informed her that she was urgently needed at Makupa Police Lines. That she went there with PC Ruto and PC Kinyua and on arrival, they found Police Officers standing outside the accused person's house. She named them as PW3, PW4 and PC Letio and indicated that they were the accused person's neighbours.

14. It was PW5's evidence that they found a curtain tied around the deceased's neck, with her body dangling from the door of the accused person's house, with her feet touching the floor. PW5 stated that the deceased's arms were dangling on her side and her head was bent. She indicated that she called the Deputy OCS Makupa Police Station after the OCS failed to take her call. That the said Deputy OCS, Isaiah Chepyator raised the scenes of crime from Urban DCIO, who went to the scene and took photographs of the deceased's body as well as her oils and clothes which were on the floor.

15. PW5 stated that 2 pieces of curtain were fixed outside the door of PC Kanyi's (accused person's) house and the said house was locked from inside. She indicated that in the company of PC Kinyua and PC Ruto, they took the deceased to Coast Province General Hospital (CPGH) Mortuary.

16. PW6 was Chief Inspector Christopher Kenga of Urban Division Mombasa. His evidence was that on the night of 1<sup>st</sup> October, 2017 and 2<sup>nd</sup> October, 2017 at 2:40a.m., he was asleep at his home when Sgt. Chai called him and informed him of an incident at Makupa Police Lines to the effect that a woman who was a girlfriend to the accused person had been found outside the door where she had committed suicide. PW6 stated that he went to the scene and Sgt. Anakeya briefed him about the incident and that the scenes of crime had taken photographs and the body had been taken to CPGH. He indicated that by then the time was 5:00a.m.. He proceed to CPGH where he was shown the deceased's body.

17. He testified that on going back to Makupa Police Station, he asked Sgt. Anakeya to escort him the accused person's house and on reaching there, Sgt. Anakeya knocked at the door 4 times and the accused person opened the door. That they entered into the one roomed house and he asked the accused person what had happened as he had created a disturbance by fighting with his girlfriend. He stated that the accused person informed him that he did not fight with her and he could even summon her to confirm that.

18. PW6's evidence was that he then asked the accused person if he knew that his girlfriend had committed suicide the previous night and that he bowed down and covered his face with his hands and he asked where the deceased was. PW6 then told the accused person that his girlfriend's body was at CPGH and he told him to compose himself as they tried to sort out the issue. PW6 indicated that the accused person had been disarmed at night by Sgt. Anakeya. PW6 indicated that he assigned 2 police officers to accompany the accused person so that he would not harm himself. He stated that the case was taken over by the CID after the DCIO Urban Division went to the scene and after he had viewed the deceased's body at CPGH.

19. PW7, Florence Wanjiku Kamanu, the deceased's sister testified of how the deceased visited her, her brother (PW1) and her husband (PW2) on 1<sup>st</sup> October, 2017 after she invited her to their house. She stated that the deceased visited them at around 6:30 p.m., and was taken to the accused person's house at 11:00 p.m., on the said date by PW2 and her brother PW1.

20. She stated that in the morning at 7:00a.m., she saw a missed call and on calling back the number, a man answered her call and said that

he was the OCS Makupa Police Station. He asked her if she was Judy's sister and he told her to hurry to Makupa Police Station with her brother. PW7 stated that on reaching the said Police Station, they went to a Police Woman where they found the accused person and 2 other Police Officers. That the Police Woman told them that the deceased had hanged herself. That PW1 asked the Police Woman what had happened to the deceased as he had left her at the Police Station in good health but the Police Woman did not respond.

21. PW8 was Inspector Paul Chai of Makupa Police Station. He stated that on 1<sup>st</sup> October, 2017, he reported on duty at 6:00p.m. at Makande Road Block as the Officer-in-Charge of the Road Block. He stated that he was with PW3 and Administration Police Officers. That they booked off at 2:00 a.m., at Makupa Police Station and he went to his house.

22. He stated that as he was removing his police uniform, he heard a knock on the door. That on going outside his house, he found PW3 who told him that he had seen a woman outside the accused person's door and he suspected that she was dead. PW8's evidence was that they went up to the accused person's house and right outside his door, he saw a door curtain tied around the woman's neck. He stated that the woman's legs were bent and her knees were almost touching down. PW8 stated that on seeing the woman, he called the duty officer, PW5 to attend to the scene. That he tried to call PW6 and that he then called Inspector Yator who was the Officer-in-Charge of the crime branch. That the PW6 and Inspector Yator went to the scene. That Inspector Yator took over the scene and called the scenes of crime personnel. PW8 stated that the door to the deceased's house was locked from the inside and they did not try to wake him up. PW8 also stated that the scene was photographed and the said photographs captured the deceased's body, her clothes and personal items that were strewn all over the corridor. He stated that photograph Nos. 6 and 7 were of the woman's body hanging on a curtain with her legs touching the ground, with her knees bent. PW8 stated that the deceased's body was moved from the scene and taken to CPGH. It was his evidence that PW6 then decided to wake up the accused person. That Sgt. Anakeya who was in charge of discipline and the amoury knocked at the accused person's house to wake him up and he saw the accused person handing over his pistol to him. PW8 stated that he had worked with the accused person at Makupa Police Station for 2 years.

23. PW9 was PC Ashford Kinyua of Makupa Police Station. He stated that he was on night duty in the crime office at 2:30 a.m., on 2<sup>nd</sup> October, 2017. He indicated that he was in night shift with PW5 who was the duty officer but she was at that time not at the report office. He stated that she called him on phone and told him to go to the rear side of the report office where there were police lines. He stated that he found PW8 and PW5 who told him that there was a body of a female adult hanging on the door to the accused person's house. PW9 stated that he went to the scene and saw the body of a female dangling outside the door to the accused person's house. He stated that the bigger portion of the curtain was outside the door of the said house and the other portion was inside the house. It was PW9's evidence that they waited for Senior Officers to go to the scene. That inspector Yator reached there and the scenes of crime took photographs. He stated that PW4 who was the immediate neighbour to the accused person also went to the scene. He testified that after photographs were taken, Inspector Yator and Chief Inspector Kulicha of scenes of crime gave instructions for removal of the deceased's body.

24. PW9 stated that some police officers lifted the said body and he cut the curtain with a knife above the deceased's neck. His evidence was that the curtain was tightly tied around the deceased's neck as shown in photograph 9. He identified in Court the portion of the curtain he cut off and indicated that the other portion of the curtain was inside the house with a portion of it hanging outside the accused person's house. PW9 testified that they took the deceased's body to the Land Rover and then went back outside the accused person's house with Sgt. Anakeya and PC Kosgei as Sgt. Anakeya said that the accused person had a pistol which he needed to surrender. PW9 further testified that since he had worked with the accused person for 2 years, he knocked at his door about 5 times and called out his name telling him "*Kanyi, it is Kinyua, open the door*". PW9 stated that after some time, the accused person opened the door and he told him that his girlfriend was crying at the report office saying that he had chased her away. PW9's evidence was that he told the accused person that they had gone to take his pistol as she might go back and he might shoot her and they asked him to give them his pistol for it to be kept in safe custody. That the accused person gave his pistol to Sgt. Anakeya.

25. PW9 stated that at that time the accused person saw that the curtain was cut and said that his girlfriend went to his house drunk and he chased her away and threw her clothes outside and he suspected that she had cut his curtain. That they told the accused person to continue sleeping and they decided not to tell him about the death of his girlfriend and that the OCS would tell him about it when he woke up. They then took the deceased's body to CPGH. PW9 stated that in the morning, the OCS (PW6) went to work and sent some officers to call the accused person. He stated that when he went to take some charge sheets to the OCS to sign in his office, he found the accused person therein crying. That the Deputy OCS had to call a Counselor for the accused person as he was distraught and was crying throughout.

26. Senior Superintendent Jacob Kaberi Kanake testified as PW10. He was the DCI Eastern Region as a staffing officer. He indicated that he was previously in charge of CID Urban Division, Mombasa. He explained that he has 36 years work experience and that he took over investigations in this case from PW6, the OCS Makupa Police Station. He stated that while on duty on 2<sup>nd</sup> October, 2017, he received information that a certain lady had hanged herself outside a door at Makupa Police Station. That he went to the house which was at the Police Lines and learnt that the scene of crime had gone to the scene at night and processed the scene and the body had been taken to CPGH. His evidence was that outside the house he found a piece of curtain which was hanging outside the door and it appeared as if the curtain could not support a dead body. He identified the piece of curtain which was a quarter in size, which had been left at the door after the other piece was cut off. He stated that on inquiring where the other piece of curtain was, he was told that it had been cut off to enable removal of the deceased's body. He testified that there was a piece of string that was in the inner part of the house which was holding the curtain in place. He identified the orange piece of string in Court.

27. It was the evidence of PW10 that he called the scenes of crime officer, Chief Inspector Kulicha to the scene and asked to be shown the photographs he had taken, which were in his camera. PW10 stated that when looking at them he saw scattered clothes and other personal items at the scene in photographs 2, 3, 4 and 5, but when he checked the scene, there were no clothes or personal items. That when he looked at photograph 6 in the camera, he saw that the deceased was kneeling down which he found peculiar because when one commits suicide, the toes would touch the ground slightly. PW10 also stated that he noted that the curtain around the deceased's neck did not form a reef knot that could have led to strangulation. He also noted that the curtain was also not tightly tied around the deceased's neck and that the curtain could not have pulled the body down.

28. PW10 testified that he observed at the scene that the piece of curtain that was cut was still intact on the door frame and on pulling the piece of curtain, it tore. PW10 stated that he noted that it was not strong enough to support the woman's body. In referring to photographs 8

and 9, he said that the curtain was not tightly tied around the woman's neck. In making reference to photographs 9, 10 and 11, he said that they show that the deceased was kneeling and further that photograph 11 shows that the piece of curtain left on the door was not stressed from the deceased's weight and she could not have hanged herself. He stated that photograph 13 shows the piece of curtain at a close up view which showed that the deceased could not have used it to hang herself.

29. PW10's evidence was that he requested Chief Inspector Kulicha to take him to CPGH and on looking at the deceased's body, he did not see any bruises of hanging on her neck. PW10 stated that he asked Chief Inspector Kulicha to take photographs 29 and 30 which are close up views of the deceased's neck which show no marks or bruises on her neck.

30. PW10 further stated that he asked Chief Inspector Kulicha to take measurements of the deceased to ascertain her height and compare it to the height of the door. PW10 indicated that they went back to the scene and photographs 15, 16, 17 and 18 were taken which show the length of the accused person's door from the floor. He stated that the height of the deceased could not have allowed her to hang below the door lock of the deceased's door and the position she was at, could not have allowed her to hang to death.

31. PW10 testified that he asked the accused person to open his house and in making reference to photograph 21, PW10 stated that it shows that the deceased's clothes had been put in the accused person's house and were well arranged on the floor. That on inquiry, the accused person told him that he was the one who had picked the deceased's clothes, bags and personal items from outside the house and kept them in his house.

32. PW10 made reference to photograph 23 which showed the position where the piece of curtain was fixed on the orange piece of string which was connected to the wall on both sides. He stated that the piece of string did not show signs of having supported any weight. He also referred to paragraphs 24 and 25 which are close up views of the piece of the string showing how it was fixed to the wall. PW10 testified that after what he observed when he went to the scene and after viewing the photographs taken by the scenes of crime, he realized that what he had observed was not consistent with death by hanging. He formed the view that the deceased was strangled and then the curtain was tied around her neck to stage manage a scene of hanging.

33. PW11 was Doctor Navisa Seif of CPGH. She produced the post mortem report on behalf of Doctor Abdulrahman who was by the time of hearing of this case pursuing post graduate training in Egypt. She stated that the post mortem findings were that the deceased had peripheral cyanosis, which is discoloration of the whole body showing lack of oxygen. She stated that there were ligature marks around the anterior and lateral parts of the neck but there was no hemorrhage in the deceased's body. PW1 stated that the cause of death was asphyxia secondary to hanging. She further stated that the tightening of the rope (sic) around the neck led to lack of blood and oxygen to the brain which leads to death within 3 minutes.

34. The Scenes of Crime Officer was Chief Inspector Kulicha, who testified as PW12. He stated that he was in charge of the crime scene services, Mombasa County and he was stationed at the Regional Headquarters. His evidence was that on 2<sup>nd</sup> October, 2017 at 2:30a.m., while at standby duties, he was called by PW5 to Makupa Police Station to attend to a scene at Makupa Police Lines. He stated that on arrival, PW5 showed him the body of a female adult hanging on the door of one of the units, at door No. 6 from the left side and door No. 4 from the right side. He stated that the deceased was hanging from a curtain and that there were items belonging to a female which were allegedly the deceased's that were scattered along the corridor close to the room which was said to have been allocated to No. 10631 PC David Kanyi of Makupa Police Station.

35. PW12 stated that among the photographs he took was photograph 25 being a close up view of female belongings scattered along the corridor, photograph 6 which was a general view of the body kneeling on the ground and photograph 7, a close up view of the said body kneeling on the ground. He stated that photograph 8 shows the net curtain (lace curtain) around the deceased's neck.

36. PW12 testified that later that day, he with the DCIO Urban (PW10) revisited the scene and visited the mortuary at CPGH to review the deceased's body. PW12 stated that he took photographs 12 and 13 at the scene when he revisited it, which were a close up view of the door where the body was found. He stated that photographs 14 and 15 were the general and close up view showing the height of the door where the body was found and it was 200 cm. He further stated that the measurement was taken from the point at which the curtain was fixed, to the ground.

37. He referred to photographs 16 and 17 as being close up views showing the height of where the deceased was found hanging which was 120 cm from the deceased's head to the ground. He stated that photographs 23, 24, 25 and 26 were close up views of the upper interior part of the curtain that was around the deceased's neck. He indicated that photograph 23 showed that the net curtain (lace curtain) was supported by a manila string. That the string was supported by 2 nails fixed to a concrete wall and that the 2 nails were 3 inches long each. In making reference to photographs 27 and 28, he stated that they show the deceased's height and that he took the said photographs at CPGH mortuary. He stated that the deceased was 166cm in height. In reference to photographs 29 and 30, he stated that they were close up views showing marks on the deceased's neck. In regard to photographs 27 and 28, he stated that the deceased was a tall lady of moderate weight but he did not weigh her.

38. PW12's evidence was that if the deceased was standing at the door to the accused person's house, the difference between the top of her head and the point at which the net curtain (lace curtain) was fixed would be 34 cm. He stated that he tried to examine the shape of the knot on the deceased's neck but due to the nature of the curtain which was a white net curtain (lace curtain), he could see a knot but he could not ascertain the shape of the knot. He stated that photograph 6 was a general view of the deceased's body kneeling on the ground and photograph 7 was a close up view of the same.

39. On being put on his defence, the accused person gave a sworn defence. He called no witnesses. He stated that he was No. 107631 Police Constable David Kanyi Njuguna of Makupa Police Station residing at Makupa Police Lines. He indicated that he had 5 years' work experience. He stated that he knew the late Judy Wangari who was his girlfriend of 7 months before she died. He further indicated that she would go to his house to visit and stay overnight or for a week and then go back to her sister's house in Bamburi. He stated that a few of Judy's personal belongings were in his house but she was not living with him.

40. His evidence was that on 1<sup>st</sup> October, 2017 he woke up to normal duties as a SPIV driver (plainclothes police officer). That at 9:00p.m., when on patrol duties at Makupa area, he received a call from a number he did not know and on receiving the call he found that it was Judy who told him that she was attending a family meeting at Bamburi. That at 10:00p.m., she called him and asked him to pick her but he told her that he was still at work.

41. The accused person indicated that he finished duty at 12:45a.m., on 2<sup>nd</sup> October, 2017. That he took a shower and as he was about to sleep, he heard a knock at the door. That on opening it, he found that it was Judy who was with a man whom she introduced as her younger brother. That he welcomed them to his house and Judy started complaining that he had not gone to pick her. That she started packing her belongings and he told her that he was tired and he threw out her personal belongings, and her brother Kiarie (PW1) told her that they should leave. The accused person stated that he threw out Judy's things out of his house because she had not told him that she would be going out to her sister's place and that she would go back to his house drunk. That he was not happy that she had gone to his house when drunk. That she told him that her brother-in-law (PW2) was waiting for PW1 in a car outside.

42. The accused person indicated that after throwing out Judy's personal belongings, he closed the door and slept. That at 3:30a.m., Sgt. Anakeya who was in charge of the armoury, in the company of PC Ashford Kinyua (PW9) and Corporal Kosgei knocked at the door of his house. That he opened the door for them and they entered his house. That Sgt. Anakeya told him that there was a lady at the reception complaining that they were having issues. The accused person said that he asked them to allow him to change from his night clothes and wear jeans but they refused. That Sgt. Anakeya requested him to surrender his firearm as that is the standard procedure when a problem arises. That he surrendered his pistol to them and told them that it was a small problem between him and the lady and they told him that they would solve it. That he locked the door to his house and slept. The accused person further stated that at 5:45a.m., Sgt. Anakeya went to his house with Chief Inspector Kenga and told him to accompany them to the latter's office. The accused person stated that when he was leaving the house to go to the office of the OCS, he noticed that the curtain at the door to his house had been cut off. He stated that he also noticed his girlfriend's items were still outside.

43. He stated that the OCS asked him whether he had a misunderstanding with his girlfriend and he told them that she should be called because to him it was a small problem. He stated that when he insisted that she should be called, the OCS told him that his girlfriend had committed suicide outside the door to his house using the curtain on his door. He stated that he was shocked by the news and became unconscious and that he never thought she was suicidal. That the Deputy OCS called a Counselor to counsel him and PC Jeremy and PC Letio were assigned the duty of monitoring him. He stated that he gave the cell phone number from which he had received a call the previous night and Judy's sister received the call. That she was summoned to Makupa Police Station. That Judy's sister (PW7), her brother (PW1) and Judy's sister's husband (PW2) went to the Police Station and on being asked whom he knew, he said that he knew PW1, whom he had met the previous night. That PW1 was asked if he had left his sister behind but he said that he left with his sister but she told them that she would go back to her boyfriend and she returned to the Police Lines.

44. The accused person stated that the DCIO Urban (PW10) went to Makupa Police Station and asked them to go to DCI Urban to record statements. The accused person produced the statement he recorded as defence exhibit 1. He denied having killed the deceased and said that he had no idea about how she died and that he was only told that she committed suicide outside the door to his house.

## SUBMISSIONS

45. In written submissions filed on 22<sup>nd</sup> September, 2020 the prosecution filed its written submissions. The prosecution Counsel, Mr. Muthomi summarized the prosecution's evidence and submitted that considering that the door to the accused person's house measured 200cm in height and the deceased's body was found hanging around the height of 120cm, whereas the deceased measured 166cm in height, it was unlikely that an adult woman of that size would have committed suicide by hanging from such a position. He stated that the accused person in his defence testified that he and the deceased were lovers and that on the material day they had had an altercation which prompted him to throw her belongings outside his house. That the accused person had said that he had been with the deceased around 2:00a.m. on 2<sup>nd</sup> October, 2017.

46. On the issue of malice aforethought, Mr. Muthomi relied on the case of **Republic v Tiubere s/o Ochen** 1945 EACA 63, where the court held that the inference of malice aforethought can be established by considering the nature of the weapon used, the part of the body targeted, the manner in which the weapon was used and the conduct of the accused before, during and after the attack. He also relied on the case of **Ogelo v Republic** [2004] 2 KLR 114, where the Court held that malice aforethought can also be inferred from the manner of the killing. He also relied on the case of **Nzuki v Republic** [1973] KLR 171 where 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 intention to cause death and to cause grievous bodily harm.

47. The Prosecution Counsel submitted that in this case malice aforethought was established by the conduct of the accused person in throwing out the deceased's belongings after they had an altercation. He further submitted that there was ample circumstantial evidence to point to the fact that the accused caused the death of the deceased. He cited the case of **Abang alias Onyango v Republic** Criminal Appeal No. 32 of 1990 and **Sawe v Republic** [2003] KLR 363 on circumstantial evidence.

48. Mr. Muthomi stated that circumstantial evidence can be a base of a conviction only if there are no other existing circumstances weakening the chain of circumstances relied on by the prosecution. He relied on **Forensic Research and Criminology International Journal** Vol. 8, No. 8 (2020) which states that when a homicide is disguised as suicide, the fabrication of a crime scene after incidence is a complicated task and leaves behind some clues which subsequently help for detection of the crime. It further states as follows –

*“It needs skill/expertise on the part of investigating officer/and forensic expert for correct evaluation to come to conclusion. The careful examination of the hanging body and crime spot on the following points coupled with autopsy study are essential tools to establish simulated crime scene;-*

- *Undisturbed hanging body;*

- *Detection of different elements of evidence at crime scene;*
- *Sketch/photograph of the scene /injury;*
- *Examination of hanging material (noose, knot, loop etc);*
- *Examination of point of suspension;*
- *Evidence of support to reach the hanging point;*
- *Examination of ligature material (rope) and direction of fiber;*
- *Injury on the body/neck of victim (anti-mortem);*
- *Collection of swab from near the injury (nail mark);*
- *Examination of fingerprint on the chest/throat;*
- *Post-mortem symptoms of hanging;*
- *Influence of drug/intoxicants;*
- *Sign of dragging;*
- *Suicide note/cell phone to examine call records; and*
- *Family history, etc.”*

49. It was submitted that by the Prosecution Counsel that the altercation between the accused and the deceased went past 0200 hours and that was confirmed by the accused in his evidence. Mr. Muthomi further stated PW3 gave evidence that around 2:20 a.m, he found the body of the deceased dangling from the door of the accused person's house, thus the duration from the time of the quarrel as averred by the witnesses and the time the body was found was less than 20 minutes. He stated that the fact that the deceased and the accused person had a quarrel and that the accused person threw her items outside, points to the fact there were underlying issues between the two. Mr. Muthomi submitted that the position in which the body of the deceased was found hanging and the knot which was loose around the deceased's neck were not in tandem with a suicide theory. He further submitted that the height of the door of the deceased's house was 200 cm, and the string that was supporting the curtain was supported by nails, could not support the weight of the deceased to choke her to death.

50. He also submitted that there were no signs of struggle at the scene and the point of suspension clearly rules out suicide. He stated that the deceased was murdered and the scene was created/fabricated to resemble a suicide incident.

51. It was submitted that the altercation took place in the accused person's house and that the accused person being the last person who was with the deceased irresistibly points to him as having had a hand in the death of the deceased, and that the accused person was at the scene of crime which happened to be his house.

52. Mr. Muthomi submitted that the deceased's death could not have been caused by a third party and it would be such a coincidence that a third party could have killed the deceased and taken her to the door of the accused person's house and tied her neck loosely to disguise her death as suicide. This Court was urged to make a finding that based on the evidence tendered by the prosecution and the exhibits produced, the prosecution had proved its case beyond reasonable doubt. He prayed for this Court to convict and sentence the accused person.

53. On the 7th October, 2020, J.O. Magolo & Company Advocates for the accused person filed written submissions. They summarized the evidence tendered by the prosecution and stated that the prosecution's case was based wholly on circumstantial evidence. He submitted that the Doctor produced the post mortem report in which the cause of death was stated to be asphyxia caused by hanging.

54. That there were no eyewitnesses as to the circumstances under which the deceased person met her death. He relied on the case of **Republic v Daniel Musyoka & 2 others** [2014] eKLR, to demonstrate the elements that constitute malice aforethought. Mr. Magolo stated that in this case, the only evidence adduced by the prosecution was that there was disagreement between the accused person and the deceased. That the accused was found deeply asleep in his house and he was unaware of his surroundings. It was submitted that it was a Police Officer who broke the news of the deceased's death to the accused person and he was deeply shocked by the news. That it was accepted in evidence that the Police Lines were widely accessible even to outsiders making it possible that an intruder could harm the deceased. It was submitted that the Doctor confirmed that the deceased died by way of strangulation from hanging and there were no marks on the body to insinuate a struggle or a fight. It was also submitted that the circumstantial evidence adduced by the prosecution did not meet the threshold required to secure a conviction and that there was no attempt made by the prosecution to prove *actus reus* for the offence of murder. He prayed for the acquittal of the accused person.

## **ANALYSIS AND DETERMINATION**

55. The issue of determination is if the accused person killed the deceased with malice aforethought or if the lesser charge of manslaughter or any other cognate offence has been proved by the prosecution. Malice of aforethought is defined under Section 206 of the Penal Code as –

***“(a). An intention to cause death or to do grievous harm to any person whether such person is the person actually killed or not.***

***(b). Knowledge that the act or omission causing death will cause the death of or grievous harm to some person, whether such 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 be caused.***

***(c). An intent to commit a felony.***

***(d). An intention to facilitate the escape from custody of a person who has committed a felony.”***

56. In this case, the prosecution adduced both direct and circumstantial evidence. Direct evidence related to the events preceding Judy Wangari Wanja’s death. It was not disputed that Judy was in good health on 1<sup>st</sup> October, 2017. As per the evidence of her sister PW7, Florence Wanjiku Kamanu, she invited Judy to a house in Bamburi where she and her husband (PW2) used to reside in. PW1 who was a brother to both Judy and PW7 was visiting the latter and had lived in her house for a month. Judy’s visit was from 6:30p.m, and she left Bamburi at 11:00p.m., for her boyfriend’s house at Makupa Police Lines at Makupa Police Station. PW2 drove her to Makupa Police Station. They were accompanied by PW1, who on arrival, escorted Judy to Makupa Police Lines, to the accused person’s house. She knocked at the accused person’s door and he opened it. He asked them why they were late. As per PW1’s evidence, the accused person told Judy that she would not sleep in his house but she insisted that she would sleep there. The accused person threatened to take her to the cells and he made as if he was taking her there by holding her hand, but he did not and they went back to the house. At that time, PW1 was following them.

57. It is not disputed that the accused person started throwing out Judy’s clothes as well as her other personal items from his house. At that time, she was pleading with him by telling him that if he loved her, he should stop throwing her items outside. The accused person however locked himself inside the house. Judy refused to accompany PW1 to their sister’s house and told her brother (PW1) to leave as the accused person would open for her. When the above was ongoing, PW2 called PW1 and asked him why they were taking so long and he told him that there was a disagreement between the accused person and Judy.

58. PW2, Judy’s brother-in-law corroborated PW1’s evidence to the effect that he and PW1 took Judy to Makupa Police Station and that PW1 escorted her to her boyfriend’s house at Makupa Police Lines. That after PW1 and Judy had gone to the said Police Lines, after 30 minutes he became impatient and dialed Judy’s phone and that PW1 took the call and told PW2 that there was a disagreement between Judy and her boyfriend. PW2 told PW1 that if there was a disagreement, Judy should go with them to his house.

59. The evidence adduced by PW2 reveals that 15 minutes later, PW1 went back alone to where PW2 had parked the car and told him that Judy would sort out the issue with her boyfriend. PW1 and PW2 left for the latter’s house and slept.

60. PC Jeremy Levis Malova (PW4) based at Makupa Police Station further corroborated the evidence of PW1 about the disagreement between Judy and the accused person in his evidence that on 2<sup>nd</sup> October, 2017, he went to his house at 12:30 a.m., after patrol duties. That after some time, he heard the accused person quarreling his girlfriend Judy, whom he was telling to go back to where she had come from. That he could hear the voice of another man interjecting. PW4 could hear the conversation going on as he was living in the 2<sup>nd</sup> house after the accused person’s house. PW4 heard the other man telling Judy that they should go home and that she could go to the accused person’s house the following morning. PW4 also heard the said person telling another one on phone that he had told Judy that they should go home and go back (to Makupa Police Lines) the following day but Judy had told him to leave her and that she would be okay. PW4 then heard the sound of things being thrown outside and heard the sound of the accused person’s house being locked. That he could hear the sound of Judy knocking at the door for about 15 minutes. PW4 then slept.

61. Judy’s body was found by PW3 at 2:20 a.m., on 2<sup>nd</sup> October, 2017 when he was going to his house at Makupa Police Lines from night duties at a road block at Makande. As he was passing by the accused person’s house, he stepped on a plastic container and upon shining a torch at the said item, he saw that it was a bottle of a lady’s moisturizer. He then saw a lady hanging from a curtain that was fixed to the door. He explained that a part of the curtain was on the inner part of the accused person’s house and the other part of the curtain was around the woman’s neck, with a knot tied around the curtain. His evidence was that her head was facing upwards and she appeared as if she was kneeling at the door.

62. On receipt of report of the death of the woman along the Police Lines, PW6, Inspector Christopher Kenga and Sgt. Anakeya went to the accused person’s house in the morning. Sgt. Anakeya knocked at the door and PW6 requested the accused person to accompany him to his office. He then told him that his girlfriend had committed suicide the previous day. That the accused person bowed down and covered his face with his hands. On being cross-examined, PW6 stated that he got the impression that the accused person did not know about the death of his girlfriend.

63. PW5, Cpl Keziah Kalayu of Makupa Police Station in cross-examination indicated that in her statement she stated that the accused person committed suicide. In re-examination she said that she was not sure that the woman had committed suicide. That she was told by her bosses that there was a woman outside the door of the accused person’s house with a curtain around her neck.

64. According to PW9, PC Ashford Kinyua, after going to the scene outside the accused person’s house and after the Scenes of Crime Officer had taken photographs of the deceased’s body and the scene, they were given instructions to remove the body. He cut off the curtain around the deceased’s neck with a knife. He cut it off above the deceased’s neck. In his opinion, the curtains were tightly tied around her neck, with the bigger portion of the curtains being outside the accused person’s house while the other portion was inside the house.

65. The proposition that the deceased committed suicide was discounted by the Investigating Officer, PW10, Senior Superintendent Jacob Kaberi Kanake and the Scenes of Crime Officer, PW12, Chief Inspector Klein Kulicha.

66. PW10 who was then the DCIO Urban Mombasa took over investigations from PW6, Chief Inspector Kenga. PW10 visited the scene at Makupa Police Lines and found a ¼ piece of curtain which was hanging outside the door of the accused's house. He formed the impression that the curtain could not have supported a dead body. He also noted that there was a piece of string that was on the inner part of the house that was holding the curtain in place.

67. On PW10 reviewing the photographs taken by PW12, he noted that the deceased was kneeling down which he found to be peculiar as her toes should have been touching the ground slightly. He also noted that the curtain around the deceased's neck did not form a reef knot that would have led to strangulation. In his opinion, the curtain was not tied around the deceased's neck tightly and it could not have pulled the deceased's body down. PW10 asked PW12 to take him to CPGH where the deceased's body had been taken for preservation. They then went back to Makupa Police Lines.

68. PW12 who took photographs at the scene and measured the deceased's height found her to be 166 cm. He took measurements from the point at which the curtain was fixed to the ground and found it was 200 cm, being the height of the door. His evidence was that the difference between the top of the deceased's head and the point at which the net curtain was fixed, was 34 cm. He also stated that he took photographs showing that the deceased was kneeling on the ground.

69. The Doctor who had conducted the postmortem on the deceased's body had gone for further studies in Egypt. Another Doctor, PW11, produced the postmortem report on his behalf. She stated that the said report showed that the deceased died from asphyxia secondary to hanging.

70. This Court in determining this case must consider both direct and circumstantial evidence and bear in mind the conflicting evidence as to the deceased's cause of death.

71. Circumstantial evidence was well elucidated in the case of **Sawe v Republic** (supra) as follows –

***“In order to justify on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.”***

72. In **Republic v Kipkering Arap Koske & another** (1949) EACA the Court of Appeal held as follows –

***“That in order to justify, on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of any explanation upon any other reasonable hypothesis than that of his guilt, and the burden of proving facts which justify the drawing of the inference from the facts to the exclusion of any reasonable hypothesis of innocence is always on the prosecution and never shifts to the accused.”***

73. The accused person in his defence stated that the deceased went to his house late and that she was drunk and quarrelsome, as she was asking him why he had refused to pick her from Bamburi. PW1, PW2 and PW7 who were in the company of the deceased from 6:30p.m. to 11:00p.m., did not state that the deceased had taken any alcohol and that she was drunk by the time she left Bamburi for Makupa Police Lines.

74. According to PW2 and PW7, the deceased had been invited to their house to discuss a family matter which the father of PW1, PW7 and the deceased had told PW2 to discuss with the others. PW4, PC Jeremy Malova who overheard the quarrel between the accused and the deceased did not state that he heard the accused person asking the deceased the reason why she had gone to his house in a drunken state. PW4 heard the accused person asking the deceased why she had gone to his house late. The defence by the accused that the deceased started packing her clothes into bags before he threw her personal belonging outside is discounted by PW1 who testified that the accused person threw out the deceased's clothes and personal items outside his house and told her to go back where she had come from. PW1 in his evidence did not state that the deceased entered the accused person's house and packed her bags. In any event, she would not have done so as her intention was to stay in the accused person's house. In cross-examination by Mr. Magolo, PW1 stated that the accused person did not allow the deceased into his house.

75. From the evidence of PW1 and PW4 it is evident that the deceased was not quarrelsome. Even after the accused person threw out her clothes and personal items outside his house, she was reconciliatory and she was hopeful that he would open the door for her as she thought that she would convince him to do so. She thus refused to go back to PW2's and PW7's house in Bamburi. PW1 left her outside the accused person's house. PW4 heard her knocking at the door to the accused person's house for 15 minutes and he then fell asleep. Whatever happened thereafter between the deceased and the accused was not witnessed by anyone.

76. As the old adage goes, dead men (women) tell no tales. It is also known that a picture tells a thousand words. A bundle of 30 photographs was produced by PW12, the Scenes of Crime Officer.

77. The photographs have numbers written on the top right hand corner. Photographs 2 to 5 evidently show the deceased's clothes and personal items strewn on the corridor outside the accused person's house. The said photographs give credence to the evidence of PW1 and PW4 that the accused person threw the said items out of his house.

78. Photographs 6 and 7 show that the deceased's knees were touching the floor outside the accused person's house.

79. In photograph 7, one side of the deceased's left foot is touching the ground and the toes of the right foot are touching the ground. Dust is also visible on her feet. Photographs 8 shows two pieces of white curtain material tied around her neck. One of the said curtain materials is made of lace also commonly known as a net curtain. The other curtain is made of fabric material. Pieces of the curtain materials that were tied around the deceased's neck were produced as exhibits.

80. In photograph 9, it is clear that the top of the deceased's head was just below the latch of the door to the accused person's house. The length from where the deceased was found hanging on door to the ground is well captured in photograph 17 as 120 cm. The height of the door where the body was found is captured in photograph 15.

81. From photographs 23, 24, 25 and 26, it is apparent that the curtains above the accused's person's door were held in place by a thin manilla string which was tied on nails fixed on the wall on either side of the door. The deceased's height is evident from photograph 28 as being 166 cm. Photographs 29 and 30 show marks on the upper part of the deceased's neck just below her jaw line.

82. Considering that the fabric curtain and the lace curtain tied around the deceased's neck were held in place by a thin manilla string, it defies logic that the said string would have held the deceased's weight without it snapping off, if at all the deceased committed suicide.

83. PW10's evidence was that the lace curtain was also not strong enough to support the weight of an adult woman. When he went to the scene he pulled at the piece of the lace curtain to test if it was made of sturdy material but a piece cut off in his hands. He also noted from the photographs that the curtains around her neck were not tied tightly hence they could not have strangled her to death.

84. This Court having keenly looked at the photographs produced has no good reason to depart from the findings of the Investigating Officer who resolved the puzzle of the deceased's death. He was of the view that there was an attempt to cover up the cause of the deceased's death. The Scenes of Crime Officer corroborated PW10's evidence that based on the length of the door and the deceased's height she could not have hanged herself.

85. Just like the two Police Officers, this Court notes that the deceased could not have defied the force of gravity to hang herself at a height of 120 cm when her full length was 166 cm. For her to successfully do so, it would have required her to tie a knot in the curtains fixed on the accused person's door at a height above 166 cm for the force of gravity to cause her death by pulling her body downwards.

86. This Court has made reference to **Britannica, the Editors Encyclopaedia 2020** which describes work in physics as the measure of energy transfer that occurs when an object is moved over a distance by an external force at least part of which is applied in the direction of displacement. **Britannica, the Editors Encyclopaedia 2011** describes displacement as the distance moved by a particle or body in a specific direction. Thus work is mass x gravity x displacement. Therefore, for substantial positive work to have been done by gravity pulling the deceased's body downwards from the point at which both curtain fabrics had been tied around her neck, the displacement between the top of the deceased's head to the ground should have been greater than the deceased's height of 166 cm, meaning that her feet should have been off the ground or slightly off the ground for her weight to pull the manilla string holding the curtains in place downwards. That in turn would have led to the curtain materials around her neck strangulating her. In this case however, the deceased was found kneeling on the ground which supported the evidence of PW10 and PW12 that with 120 cm being the displacement from the top of the deceased's head to the ground on which she was kneeling, she could not have committed suicide.

87. It is therefore the finding of this Court that logically and scientifically, there was no positive work that would have exerted pressure on the deceased's neck through the force of gravity to lead to asphyxia. The theory of suicide which was advanced by some of the accused person's colleagues at Makupa Police Station such as PW5 and PW6 falls by the wayside.

88. This Court concurs with the submissions made by the Prosecution Counsel, Mr. Muthomi, that there was some cover up done by the accused person and some of his colleagues at Makupa Police Station to make the deceased's death appear to be suicide. This Court believes that after PW1 left Makupa Police Lines and after the deceased had consistently knocked at the accused person's door, she must have incensed him to the extent that he strangled her leading to asphyxia. That would explain the mark on a part of her neck. The accused person must have then tied the curtain fabrics around the deceased's neck to make it look as if she had committed suicide. The Investigating Officer formed that opinion as to the cause of the deceased's death.

89. I hold that the stage managing of the scene gave away the accused person's culpability in the commission of the offence as the deceased's posture after death with her knees and feet touching the ground was not consistent with a person who had committed suicide. The Doctor who conducted the post mortem report did not open up the deceased's neck to do internal examination and seems to have relied on the information given to him by the police as per page 1 of the post mortem report which states

***“The circumstances of the death as are as follows:-***

***On the 2<sup>nd</sup> day of October 2017 at around 0340 hour,s the deceased was found suspended on a door curtain tied on her neck at Makupa police line, (sic).”***

90. This Court notes that the said Doctor did not have the other details surrounding the deceased's death and it is obvious that he went with the flow of the information given to him by the police from Makupa Police Station.

91. This Court notes that the cause of death as per the post mortem, notably that the deceased died from hanging is displaced by other evidence that was adduced by prosecution witnesses, showing that she must have been strangled leading to asphyxia.

92. Based on the circumstantial evidence on record, this Court draws the inference that the deceased's death was caused by a third party, the accused person, and not by the deceased herself. The cover up by the accused person did not escape the keen eyes of the Investigating Officer (PW10) and the Scenes of Crime Officer (PW12). It is apparent that there was cover up on the part of the accused person even with regard to the fact that he collected the deceased's clothes from the corridor outside his house where he had thrown them and kept them in his house.

93. PW10 was able to discern from photographs taken at the scene that the clothes and items that had been captured in some photographs

strewn on the floor of the corridor had been removed therefrom.

94. Interestingly, the initial Investigation Officer (PW6), who was the OCS of Makupa Police Station, had not taken the said items as exhibits when he visited the scene, as he was of the view that the deceased had committed suicide.

95. This Court finds it difficult to believe that the accused person slept for the better part of the night as activities were going on outside his house, such as photography of the scene and removal of the deceased's body. The accused person was a trained police officer and noting that PW3, PW4, PW5, PW8, PW9, PW11 and Sgt. Anakeya went to the scene on the night of the incident, it is impossible that there was no conversation at all that went on outside the accused person's house that could have alerted him to what was going on outside his house. It is difficult to fathom how instructions were given for the deceased's body to be lifted up and for the pieces of curtain to be cut off so that her body could be removed from the accused person's door and that he never heard a lot of movement outside his door. It is worth noting that in photograph 6, there is light seen emanating from the window of the accused person's house at the time the said photograph was taken, the same kind of light is also seen at a house at the end of the same corridor.

96. It is evident that the accused person was aware of what was going on outside the door of his house when the police came to the scene. The light which is visible in photograph 6 was put off after sometime as seen in photograph 12 which shows the scene after body was removed. This Court does not therefore believe that no one alerted the accused person about the discovery of the deceased's body outside his house.

97. The fact that curtain fabrics fixed on the inner part of the wall, which would naturally hang on the inner part of the house at the doorway, are the ones that the deceased was found hanging from the outer part of the house also beats logic and demolishes the theory of suicide. In his defence, the accused person said that he used to push the curtain materials outside his door. In this court's view, that explanation would be plausible if the door was open and not if the door to his house was locked. This is due to the position at which the string holding the curtains was fixed to the wall inside his house. It is apparent that there was cover up done by some Police Officers at Makupa Police Station to save the accused person when they got to know that he had killed the deceased in the Police Lines.

98. The deceased was in good spirits on 1st October, 2017 when she went to back to the accused person's house. The evidence however shows that the accused person was annoyed to the extent of throwing the deceased's clothes and personal items out of his house. He then locked her out of his house. His defence that she left with PW1 and then went back was controverted by PW1 and PW2 who said they left her in the Police Lines. PW1 left her outside the accused person's house. PW4 could hear the deceased knocking at the accused person's door and pleading with him to open the door for her. The deceased could have called her brother and brother-in-law to go back for her if she had not been killed. She could even have gone to the police report office to wait for the morning to reach so that she could resolve the disagreement with the accused. She was not desperate to die. It was not stated that she was depressed, suicidal or had any mental or emotional problems that could have led her to commit suicide.

99. The conduct of the accused person on the material night indicates that he was so angry with the deceased that he killed her to silence her from bothering him and causing a scene at the Police Lines, as the same would have put him in trouble as it would have resulted in disciplinary action being taken against him.

100. PW4 and PW9 were of the view that the knot tied in the curtains around the deceased's neck was tight but PW10 thought otherwise. The photographs produced are not evident of the curtains around the deceased's neck being tight and as stated, the said curtains could not have led to asphyxia unless some external pressure or force had been applied to the deceased's neck.

101. This Court has borne in mind the defence raised by the accused and noted that the same has been displaced by the evidence of PW1, PW2, PW4, PW10 and PW12. The defence put forward by the accused person was not truthful and this Court regards it as having been well choreographed by him in order to save his neck.

102. In the end, this Court holds that the circumstantial evidence adduced irresistibly points to the guilt of the accused person and the inculpatory facts are incompatible with his innocence. The said facts are incapable of explanation upon any other reasonable hypothesis other than that of guilt. This Court finds no other co-existing circumstances which would weaken or destroy the inference of guilt. As said before, the said circumstantial evidence was duly corroborated by direct evidence of the events preceding the death of the deceased.

103. The suggestion by Mr. P. Magolo that the accused could have been killed by any other person because there was no concrete fence around Makupa Police Station is too farfetched to be practically possible. It is ludicrous even to suggest that she was killed elsewhere and her body taken right outside the accused person's house and curtain materials were tied around her neck to make it look like she had committed suicide.

104. This Court concludes that it is only the accused person who had the opportunity to kill the deceased. Due to the disagreement that took place before the deceased met her death, this Court's finding is that the accused person, David Kanyi *alias* Davi unlawfully killed the deceased. He is thus guilty of the lesser charge of manslaughter. I hereby convict him for the said offence under the provisions of Section 202 as read with Section 205 of the Penal Code.

**DATED, SIGNED and DELIVERED at MOMBASA on 21<sup>st</sup> day of April, 2022 in open Court.**

**NJOKI MWANGI**

**JUDGE**

**In the presence of –**

**Accused person**

**Mr. Okanga holding brief for Mr. Magolo for accused person**

**Ms Mburu holding brief for Ms Keya for the DPP**

**Mr. Oliver Musundi – Court Assistant.**