



**State v Mbala (Criminal Case E032 of 2021)
[2022] KEHC 14907 (KLR) (30 June 2022) (Judgment)**

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**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E032 OF 2021
RE ABURILI, J
JUNE 30, 2022**

BETWEEN

STATE PROSECUTION

AND

GEORGE OPIYO MBALA ACCUSED

JUDGMENT

1. The accused person herein is George Opiyo Mbala. He is charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#) Cap 63 Laws of Kenya. The particulars of the offence are that on the September 25, 2021 at around 2200hours at Lihanda Sub-location, East Gem Location within Gem Sub-county in Siaya County, the accused murdered one Barrack Oyiyo. The accused person pleaded not guilty to the Information dated October 25, 2021. The prosecution called a total of six (6) witnesses in support of its case which is summarised herein below.

The Prosecution's Case

2. PW1 Nicholus Juma Ariya testified that on the September 25, 2021 at about 10.25pm he received information through a phone call by Peter Odongo who informed him that a person was being killed near his home so he should go and escort the person to hospital. He testified that he rode to the scene near Betty's (his neighbour) place but never found anyone. He further testified that he called out Duncan, Peter's son, who was nearby at his house and he told him that the person who was injured was leaning on a wall of a block house which was incomplete.
3. PW1 testified that he checked and saw the person injured, sitting and bending but supporting his back on the wall. It was his testimony that he called out the person as he knew him as Barrack Oiiro, but there was no respond although he was groaning. PW1 testified that he saw blood all over and injuries on Barrack's head and his hand. He further testified that he called his brother Augustine who told him that he had gone to inform his other brother as he had information already on the injury to the



- deceased. It was his testimony that he waited for Augustine who arrived with two people with whom they placed the deceased on PW1's Motor cycle and rode him to Rabuor Hospital.
4. PW1 stated that he was assisted by Augustine & Moses and that on their way to the hospital, fuel got finished upon reaching Tumaini School which was near Rabuor so he lay the motor cycle so that fuel could reach the carburetor after which the motorcycle started and they proceeded to Rabuor where they were told to take Barrack to Yala as his case was serious but that as he did not have fuel, he first obtained a curfew pass then he rode to Luanda where he fueled the motor cycle only to return and find Barrack already after which they took him to Rabuor Mortuary.
 5. He testified that when Peter called him, he told him to go to Betty because his brother Oyiro was killing Barrack. He testified that Duncan told him that he first heard as if someone was being assaulted and that George was killing Barrack. PW1 testified that he knew George who he identified as the accused in the dock.
 6. In cross-examination, PW1 stated that he was called by Peter Odongo but that when he went to the scene, he did not find Peter. It was his testimony that he learnt that Peter Odongo had also been seriously injured. PW1 testified that he called out on Duncan who directed him where to find the deceased, that is, near a ditch. He further testified that it was dark. PW1 further stated that he went to hospital with Augustine and Moses. He testified that Duncan was in the house. He testified that he found the deceased Barrack when he was alone.
 7. PW2 Lucy Atieno Oyiro testified that the deceased was her husband. She testified that on the September 25, 2021 her husband left home but never returned and that she was called at night by her brother in-law's wife Christine Odhiambo (Otii), who told her that her husband was badly assaulted. She testified that she told her that it was at night and she was far away at Nyaminia where she worked while urging them to take him to hospital.
 8. PW2 testified that at 11.15pm, the doctor called her and informed her that her husband had died because he was badly injured. It was her testimony that on the October 16, 2021 at 3pm, she was called by a Good Samaritan from Chulaimbo School who told her that the suspect who killed her husband had been seen there. She testified that she left on a motor cycle and went to Orongo Centre where she found bodaboda riders and told them her problem and also showed them the photograph of the accused which she had and they went and brought him and he was escorted to Maseno Police Station and shortly after, police from Yala came and took him away.
 9. It was her testimony that she knew the accused who hailed from the same clan as her late husband. She further stated that after her husband's death, the accused ran away. She further stated that the distance from her house to the accused person's house was about 30 metres. She further testified that the accused used to visit her house and would eat meals with her husband. PW2 testified that she did not know if the accused and the deceased had any disagreements. She testified that her brother –in-law's wife told her that her husband was being killed. PW2 identified Oyiro as the accused in the dock.
 10. In cross-examination, PW2 stated that her brother in-law's wife called her saying her husband (Otii) had called her and told her that Barrack was being assaulted and further that she was informed of the same by the accused's twin, Peter, who was also seriously injured. She further testified that her husband had gone to drink alcohol with the accused.
 11. PW3 Duncan Ouma Obanda testified that the deceased was his cousin. He recalled that on the October 5, 2021 he went to Rabuor Mortuary to identify the body of his cousin to the doctor before postmortem was carried out. He testified that the deceased had 5 cuts, one on the left hand which was cut completely, a cut on the ear, on the eye and head which was crushed with a blunt object and the



- leg at the right ankle. It was his testimony that he got information on September 25, 2021 that Barrack had been seriously cut and had been rushed to Rabuor Hospital where he died from.
12. In cross-examination, PW3 reiterated that he saw the deceased in the mortuary and during postmortem.
 13. PW4 Augustine Odhiambo testified that on the September 25, 2021 at 9.30 pm or thereabouts he received a message from the accused's brother, Peter Odongo, who called him saying that PW4's brother was being killed by Barrack Oyiro so he should go and rescue him. It was his testimony that he was informed that his brother was being killed at the home of Maurice Aketch so he proceeded to the place.
 14. PW4 testified that he then heard George Opiyo saying in Dholuo language that, 'Barrack, you are happy that my brother can't walk. The death of my father originated from you people,' and further that 'I am going home and if I return and find you here, I will kill you.' He further testified that George Opiyo was speaking from the lower part while PW4 was in the upper part, where he hid in the bushes and let him, George Opiyo, pass, coming from the direction of the home of Maurice Aketch. He testified that after George Opiyo had passed, he went to the home of Maurice Oketch and looked around but never saw anybody other than Maurice Oketch's son, Duncan whom he asked where his brother was. It was his testimony that Duncan took him to a house where he saw his brother Barack, badly beaten and fallen in some ditch.
 15. PW4 testified that he spoke to Barack but that Barrack could not respond so he went home to seek help to take him to hospital. PW4 clarified that the deceased was his first cousin and that he went to the house of his brother Moses Ombelu and told him what had happened to Barack after which a bodaboda man called him saying that he should hurry and go carry Barack. It was his testimony that he went to the scene with Moses and another nephew and placed Barack on a motor cycle and took him to Rabuor Hospital.
 16. PW4 testified that Barack died enroute before they reached Rabuor Hospital but they never knew and that at Rabuor they were told that the condition of Barack was serious and power was out so they should take him to Yala or Luanda but the motor cycle had no fuel. He testified that they were given a curfew pass to allow them go for fuel at Luanda but on their return, the doctor on duty told them that the patient had already died so they placed him at Rabuor Mortuary then went back home.
 17. PW4 testified that he heard the voice of George Opiyo that night which voice he knew as he had known him since he was born. He further stated that George was their neighbor and they meet from time to time and greet one another. PW4 identified George Opiyo as the accused in the dock.
 18. In cross-examination, PW4 stated that he feared George so he hid so that George could pass before PW4 proceeded to where the deceased was. It was his testimony that on the road as he walked by from the scene, George spoke alone and to himself. He further testified that when he reached the home, he did not see Barack at first but when he found him, he found him cut on the head with his hand broken. PW4 admitted that he never witnessed the fight.
 19. PW5 No xxxx PC Collins Kemboi stationed at DCI Gem testified that on the September 26, 2021 at 7.00 am, he was at the station when he received a call from CIP Mbarani, the DCIO Gem who instructed him to visit a murder scene at Lihande sub-location. He testified that he joined other officers from Yala Police Station and proceeded to the scene where upon arrival with Inspector Kizito and PC Pauline, did not find the deceased Barrack Oyiro. It was his testimony that they found a disturbed place next to an incomplete building and on its walls, there was blood.



20. PW5 testified that they inquired from one Duncan Otieno who lived near the scene and he told them that George Opiyo had fought with the deceased Barrack Oyiro and that the two had come from a drinking spree in the neighborhood so when they reached the scene, they fought. PW5 testified that they recorded the witness statements as the witnesses were still at the scene then proceeded to Dolfin Hospital mortuary where they found the deceased Barrack's body lying in the mortuary. He testified that he saw a deep cut on the head and a fracture on his left hand. He testified that they searched for the accused who was at large.
21. PW5 testified that on the October 6, 2021, he attended the post mortem on the deceased's body at Dolfin Hospital where the Doctor found the cause of the death as per the post mortem form dated October 6, 2021 which the doctor filled and signed. He further testified that on the October 17, 2021 members of the public together with relatives of the deceased arrested the accused from his hideout and escorted him to the police. He testified that they took the accused for mental assessment where the accused was found fit to stand trial and he was charged with the murder of the deceased.
22. PW5 testified that during postmortem, the deceased was identified by Duncan Ouma Obala and Thomas Ochieng to the doctor. He testified that they recorded their statements. It was his testimony that the person they rearrested from members of the public was George Opiyo Mbala the accused in the dock. In cross-examination, PW5 stated that he did not get the weapon used in the murder of the deceased.
23. PW6 Dr Philip Alinyo Omuga testified and produced the postmortem report dated September 25, 2021, for the deceased Barrack Oiiro on behalf of Dr Collins Wasike who had since left the hospital. It was his testimony that he was familiar with Dr Wasike's handwriting having worked with him for five years.
24. PW6 testified that present during the postmortem were Thomas Ochieng ID No xxxx and Duncan Ouma of ID No xxxx and further that the postmortem was done at 12.30 pm on a male African 43 years old of age, of good nutritional status and height of 85 ft. He testified that the findings were that there was a fracture of left upper arm, bruises on the chest and abdomen, bruises on the right upper limb and that of note was a scalp wound penetrating the skull measuring 2 x 5 cm, 3 x 4cm. He further testified that the brain matter was visible.
25. It was his testimony that the Respiratory, cardiovascular, digestive, genito urinary systems were all normal. He testified that on the head, there was a wound measuring 2 x 5cm by 5 x 4cm extending to the brain which was visible. On the nervous system it was his testimony that the brain matter was visible. He further testified that the spinal column was intact and the Spinal cord was normal.
26. PW6 testified that as a result of the examination, it was found that the cause of death was intracranial haemorrhage secondary to inflicted trauma. He testified that a death Certificate No xxxx was issued and the postmortem was signed by Dr Collins and stamped on October 6, 2021. PW6 produced the postmortem Report as PEX1.
27. In cross-examination, PW6 stated that the wound on the scalp could have been inflicted by either a sharp or blunt object depending on the force used though he could not tell if it was a panga. He further stated that a fracture on the upper arm was not self-inflicted due to the type of injury showing high force was used and that it was not possible that the deceased fell and fractured his hand.

The Defence Case

28. Placed on his defence, the accused George Opiyo Mbala gave a sworn testimony that on the September 25, 2021, he was at home and left at 2 pm to go and take chang'aa until 4pm then he went back home.



He testified that he was with many people at the chang'aa den where he met his uncle, Barack Oiro with whom they took chang'aa before he went home.

29. The accused testified that he worked as a casual labourer who worked in people's homesteads and that he was also a mason. It was his testimony that on the September 26, 2021 he had gone to Chulaimbo to do casual labour when at 9.00 am, people went to where he was. He stated that a lady and a bodaboda rider arrived, followed by many people who arrested him and took him to the police station where he was asked whether he knew anything that had happened to the deceased but he told them that he had no idea because it was quite a distance from where he was arrested to where he lived.
30. In cross-examination, the accused stated that he knew Barrack Oiro very well and that on September 25, 2021 at 10pm he never met Barack. He testified that he knew Augustine, PW4 who was his uncle and a brother to the deceased and that PW4 had no reason to lie to court on what he saw or heard. He stated that he went to the chang'aa den on September 25, 2021 at 2pm and returned home at 4 pm. He stated that he lived alone in his home.

Submissions

31. Only the accused person's counsel relied on her submissions on no case to answer as filed on June 27, 2022, and which this court has incorporated into this judgment.
32. On the question of whether there was death and the cause thereof, counsel for the accused submitted that there was no doubt as PW3 identified the deceased's body to the doctor who performed an autopsy on the body of the deceased and that the said doctor concluded, as per the post-mortem produced by PW6 what the cause of death was.
33. On whether the death of the deceased was unlawfully caused, counsel for the accused submitted that the prosecution failed to adduce evidence to satisfy this element.
34. On whether there was malice aforethought, counsel for the accused relied on the case of *Republic v Tubere s/o Ochen [1945] 12 EACA 63* and submitted that the prosecution evidence did not accord this court the opportunity to know the nature of the weapon used in the killing of the deceased and the manner in which that weapon was used to inflict the injuries and the part of the body that was targeted. Further, that no murder weapon was produced in court. that none of the injuries sustained are linked to any weapon, that there was no evidence on the conduct of the accused that would suggest that he had malice aforethought.
35. On whether there was proof beyond reasonable doubt that it was the accused and no other person who murdered the deceased, it was submitted that none of the prosecution witnesses were at the scene or saw the accused commit the offence or saw how the deceased sustained the injuries. It was submitted that there was no direct or indirect evidence linking the accused person to the offence herein. that since PW4 testified that it was dark and raining and he was hiding away from the scene, PW4 could not positively identify the anyone who may have been in the company of the deceased while at a distance and under the cover of darkness.

Analysis and Determination

36. I have considered the evidence adduced by the prosecution witnesses and the defence. I have also considered the submissions by the accused person's counsel as filed on June 27, 2022 on a no case to answer. The main issue for determination in this case is whether the prosecution proved its case against the accused person beyond reasonable doubt to sustain a conviction on the charge of murder.



To sustain a conviction on a charge of murder under Section 203 of the Penal Code, the prosecution is required to prove beyond reasonable doubt the following ingredients of the offence of murder:

- a. The fact and the cause of death of the deceased.
- b. The fact that the said death was caused by unlawful act of omission or commission
- c. That the accused is the person who unlawfully killed the deceased 'actus reus.'
- d. That the said unlawful killing of the deceased was with malice aforethought - 'mens rea.'

37. The fact of death of the deceased was not disputed as it was proved beyond reasonable doubt by the evidence of PW1, PW3, PW4 and PW5 all who saw the deceased's body lying in the mortuary. The cause of death was confirmed through the postmortem examination and report done by Dr Collins Wasike as produced by his colleague and acquaintance, PW6 Dr Phillip Alinyo Amuga, as PEX1, confirming that the cause of death was intracranial haemorrhage secondary to inflicted trauma.

38. As to whether the deceased's death was caused by an unlawful act or omission, Dr Wasike who carried out the postmortem on the deceased's body noted that the deceased had injuries in the nature of a fracture of left upper arm, bruises on the chest and abdomen, bruises on the right upper limb and that of note was a scalp wound penetrating the skull measuring 2 x 5 cm, 3 x 4cm and that the brain matter was visible. Dr Wasike concluded that the deceased's cause of death was intracranial haemorrhage secondary to inflicted trauma. He also stated that the injuries as noted could have been self-inflicted or as a result of a fall. He also stated that the injuries could have been inflicted by either a sharp or blunt object depending on the amount of force used in the case of the latter.

39. There is no justification for the aforementioned injuries that led to the deceased's death. In *Gusambizi Wesanga v Republic [1948] 15 EACA 65* the Court stated:

' Every homicide is presumed to be unlawful except where circumstances make it excusable or where it has been authorized by law. For a homicide to be excusable it must have been caused under justifiable circumstances, for example in self-defence or in defence of property.'

40. The evidence before court irresistibly points to an unlawful act that led to the death of the deceased. It is therefore not true as submitted by counsel for the accused person that it remains a mystery on whether or not the death of the deceased was unlawfully caused.

41. As to whether it was the accused who unlawfully killed the deceased, none of the prosecution witnesses saw the accused attack the deceased. Counsel for the accused person submitted that there was no eye witness to the alleged offence and that no PW4 testified that it was dark, raining and that he hid away from the scene hence the conditions were not favourable for positive identification of the accused person by PW4 as the person who was in the company of the deceased on that material night.

42. It is true that there was no eye witness to the unlawful killing of the deceased and that the prosecution case against the Accused person primarily rests on circumstantial evidence. In the case of *Abamad Abolfathi Mohammed and Another v Republic [2018] eKLR*, the Court of Appeal had this to say on this point:

' However, it is a truism that the guilt of an Accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence



can form a strong basis for proving the guilt of an Accused person just as direct evidence. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in *R v Taylor, Weaver and Donovan* [1928] Cr App R 21: -

'It has been said that the evidence against the Applicant is circumstantial. So it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial.'

43. The Court of Appeal also laid down the test to be applied in considering whether circumstantial evidence placed before a court can support a conviction. The court stated that:

' Before circumstantial evidence can form the basis of a conviction however, it must satisfy several conditions, which are designed to ensure that it unerringly points to the Accused person, and to no other person, as the perpetrator of the offence. In *Abanga alias Onyango v R Cr App No 32 of 1990*, this court set out the conditions as follows:

'It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Accused; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the Accused and none else.

44. In this case, PW4 testified that he received a message from one Peter Odongo who told him that his brother was being killed at the home of Maurice Oketch and when he neared the home, PW4 heard the accused say in Dholuo, 'Barrack, you are happy that my brother can't walk. The death of my father originated from you people,' 'I am going home and if I return and find you here, I will kill you.'
45. PW4 was confident and firm in his testimony that it was the accused speaking as he had known the accused person's voice very well. He stated that the accused was their neighbour since birth and that they met and greeted each other from time to time.
46. PW1 testified that he also received a call from Peter Odongo who told him to go to Betty's house because his brother Oyiro was killing Barrack. PW5, the investigating officer testified that when they arrived at the scene of crime on the material day, they met one Duncan Otieno who informed them that the accused and deceased returned from a drinking spree and fought.
47. The prosecution witness above placed the accused as the one who fought with the deceased prior to his death. PW4 was firm that he heard the accused threaten the deceased with death. PW4 stated the exact words that he heard the accused utter and that because he feared the accused, he decided to hide and let the accused pass, as the accused was walking away from where the deceased was found seriously injured. Further, the testimonies of PW1 and PW4 was that they received information from the same person that the accused was killing the deceased. In addition, PW6, in cross-examination refuted the defence claims that a fracture on the upper arm of the deceased was self-inflicted stating that the same showed that high force was used thus debunking the defence assertions that the deceased fell and fractured his hand.
48. Juxtaposed against this was the accused's testimony denying the charges against him whilst admitting that indeed on the material day he went to drink chang'aa at a place where he also saw his uncle, the



deceased, but that at 4pm he went home. In cross-examination, however, the accused admitted that PW4 had no reason to lie in his testimony. The law is clear that the accused has the right to remain silent and not to give any self-incriminating evidence should he choose to adduce evidence and challenge the prosecution's evidence. However, in this case, there is no evidence that any other person interacted with the deceased prior to his death. The accused himself admitted that he was drinking with the deceased and further that PW4, who testified on the report of the accused attacking the deceased and how he hid nearby and heard the voice of the accused threatening the deceased, had no reason to lie in his testimony. On that account, I find that the accused person's denials are completely displaced by the prosecution evidence.

49. In my careful examination of the evidence, I conclude that the circumstances proven in this case point unerringly to the Accused as the perpetrator of the offence herein, that led to the deceased's death.
50. On whether the accused had malice aforethought when he unlawfully killed the deceased, the defence counsel submitted that no malice aforethought was established and relied on the case of *Rex v Tubere S/O Ochen 1945 12EACA 63* where the Court laid down the guidelines for trial Judges in the consideration of malice aforethought where the court held that:

' To determine whether malice aforethought has been established to consider the weapon used, the manner in which it is used, the part of the body targeted, the nature of injuries inflicted, the conduct of the accused before, during and after the incident'

51. In the cases of *Ernest Asami Bwire Abang Alias Onyango v republic Ndumbe CACKA No 32 of 1990*, *Karani and three others v Republic 1991 KLR 622*, [Republic v Godfrey Ngotho Mutiso 2008 eKLR](#) and [James Masomo Mbacha v republic 2015 eKLR](#) the courts sufficiently inferred malice aforethought from the nature and type of weapon used and multiple severe bodily injuries to the victim.
52. In the instant case, the accused's motive is discernible from the manner in which the deceased met his death and the injuries sustained on his body. PW6 testified that the deceased's body showed injuries in the nature of a fracture of left upper arm, bruises on the chest and abdomen, bruises on the right upper limb and that of note was a scalp wound penetrating the skull measuring 2 x 5 cm, 3 x 4cm and that the brain matter was visible leading Dr Wasike to conclude that the cause of death was intracranial haemorrhage secondary to inflicted trauma.
53. Although no weapon used in the unlawful killing of the deceased was not recovered, it is not in every criminal case that murder weapons are recovered and such non-recovery of a murder weapon has been held not to be fatal to a conviction of an accused person.
54. As was held in [Criminal Appeal No 75 of 2014 Kazungu Katana Ngoa vs Republic](#), the absence of a murder weapon was not fatal to a conviction. In that case, the Court of Appeal at Malindi stated that:

' This Court has in the past had occasion to deal with the question and in *Ekai vs Republic* [1981] KLR 569; held that failure to produce the murder weapon of itself was not fatal to a conviction and that as long as the post mortem report had established beyond reasonable doubt the injury from which the deceased died, a conviction could still stand. Similarly, in *Karani v Republic* [2010] 1 KLR 73; the court stated that:

'The offence as charged could have been proved even if the dangerous weapon was not produced as exhibit as indeed happens in several cases where the weapon is not recovered. So long as the court believes, on evidence before it, that such a weapon existed at the time of



the offence, the court may still enter and has been entering conviction without the weapon being produced as exhibit.'

55. From the serious injuries all involving deep cut wounds extending into the brain tissue of the deceased, exposing the brain matter, it can be inferred that the accused intended to kill or cause grievous harm on the deceased as the head is a very delicate part of the body and such serious deep injuries were no doubt meant to eliminate the deceased completely.
56. In *Joseph Kimani Njau vs R (2014) eKLR*, the Court of Appeal concurred with an earlier finding of that Court (but differently constituted) in the case of *Nzuki v R [1993] KLR 171* and stated that:
- ' Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual accused:
- i. The intention to cause death;
 - ii. The intention to cause grievous bodily harm;
 - iii) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.
57. Thus, it does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed. The mere fact that the accused's conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into a crime of murder. (See *Hyman vs Director of Public Prosecutions [1975] AC 55*.' The intention to kill may be inferred from the facts of the case. This was stated in the case of *Republic v Tubere S/O Ochen [1945] 12 EACA 63* where it was held that it was the duty of the court in determining whether malice aforethought has been established to consider the weapon used, the manner in which it is used and the part of the body injured. In *Yoweri Damuliza v Republic [1956] 23 EACA 501* it was observed that an inference of malice aforethought would flow more easily from the use of a spear or of a knife than from the use of a stick.
58. In *Ernest Asami Bwire Abanga alias Onyango v Republic Cr Appeal No 32 of 1990* the court held that malice can be inferred from the manner of the killing. In that case, the court considered the fact that brutal killing was well calculated and planned by the appellant to conclude that he had an intention to kill the deceased. In *Karaki & 3 Others v Republic [1991] KLR 622*, the Court of Appeal held inter alia that malice aforethought can be deemed from the nature of injuries caused on the deceased and the weapons used.
59. In addition, motive is immaterial in criminal cases.
60. Taking all the circumstances into account, there is a clear manifestation of malice aforethought on the part of the accused person. Any person who is determined to inflict such serious injuries onto the head of another and even break the limbs is no doubt a person who is hell bent to see his victim dead. I therefore find and hold that the prosecution has proved malice aforethought beyond reasonable doubt on the part of the accused person.



61. In the end, I find and hold that the prosecution has proved beyond reasonable doubt all the elements of murder against the accused person George Opiyo Mbala for the murder of Barrack Oiro. I find him guilty of the offence of murder as charged and convict him accordingly.

62. Sentence shall be after records and mitigation as well as victim's family impact statement.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 30TH DAY OF JUNE, 2022

R.E. ABURILI

JUDGE

