



REPUBLIC OF KENYA



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**State v Onyore (Criminal Case E036 of 2021)
[2022] KEHC 11070 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 11070 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E036 OF 2021
RE ABURILI, J
JUNE 30, 2022**

BETWEEN

STATE PROSECUTION

AND

CHRISPINE OMONDI ONYORE ACCUSED

JUDGMENT

1. The accused person is Chrispine Omondi Onyore. He is charged, vide an information dated the 6th December 2021, with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#) Cap 63 Laws of Kenya.
2. The particulars of the offence are that on the 17th day of November 2021 at 2200hrs, together with others not before court, in Achiewo village of Nyangoma –Kogelo sub location, South East Alego Location in Siaya sub county within Siaya County, the accused murdered one JAA.
3. The accused person pleaded not guilty to the Information of murder against him and the trial proceeded in full. The prosecution called four (4) witnesses in support of its case which is summarised herein below.

The Prosecution's Case

4. PW1 Ezekiel Ochieng Owino testified that he was the Assistant Chief for Nyangoma, Kogelo Sub Location and recalled that on 18/11/2021 at about 2.45pm, he was at work cracking down on illicit brew and drugs with his colleague, Chris Otieno, the Assistant Chief Murngiya Sub Location and Maurice Abudha of Bar Agulu Sub Location when he received a call from his village elder Mr. Richard Okal telling him that he had received information that JAA had been killed. He testified that he knew JAA very well and that he told Richard to go and confirm the news since he had met JAA about 4 days earlier.



5. It was his testimony that after the death was confirmed, he informed his colleagues and called the police at Kogelo Police Station who assured him that they would go to the scene as they also proceeded to JAA's home at Achiwo village in my Sub location. He testified that on arrival, they found a small crowd who directed them to where the body of JAA was, at his Mothers' homestead. He testified that there were two houses in the homestead, the deceased's mother's house and his house so they went and confirmed that JAA was indeed, dead.
6. PW1 testified that they found the deceased's body lay facing down, with the head cut with an axe and the left hand was on the back side while on the wall of the house was blood and brain matter from the head of the deceased. It was his testimony that the police arrived and removed the deceased's children, MA and JA and took them out of the homestead. He testified that he spoke to the said children and realized that MA could not talk but could hear(dumb). He testified that JA told him that they had gone to school in the morning and on returning for lunch, they found their father still sleeping and as MA lit fire to cook food, JA went to check on him and found his head cut so they started crying, their neighbors heard and came then Mama Okambo went to the scene and alerted neighbors on what had happened.
7. He testified that he called Mama Okambo who went and confirmed what she had heard and gone to the scene after which PW1 requested her to go to her home with the two children to help feed them. It was his testimony that he had known JAA since 2000 and that the deceased had a wife who became mentally sick and disappeared and as such JAA lived with his two children in the home as his mother had also died.
8. PW1 testified that when he spoke to the two children MA and JA, JA explained to him that the previous night, their father had arrived home late, cooked, they ate and they went to sleep at 10.00pm or thereabout. He continued that JA informed him that he heard Omondi calling his father who was in shorts only so his father opened the door and got out and JA followed his father to the door and that his father spoke to Omondi for a while concerning land after which Omondi pulled his father (the deceased) towards the house of JAA's mother at which point JA got back into the house and they slept waiting for their father to return. PW1 testified that JA knew Omondi because he was the son to JAA's brother and that he-PW1 also knew Omondi whom he had met many times.
9. PW1 testified that on the day he went to JAA's home, he never met Omondi. He testified that he was aware of many disputes between Omondi and JAA and that JAA had reported to him that Omondi had demanded that JAA shares out land to him but JAA resisted because Omondi's mother was alive and that if Omondi was given land, he would sell it and leave his mother homeless. PW1 testified that he advised the deceased to report to the village elder and consider inviting elders to arbitrate over the matter to ensure each person had their portion of land.
10. PW1 testified that in September 2021, JAA went to his office with an injury on his cheeks and told him that Omondi had assaulted him with a rungu after which PW1 referred the deceased to hospital for treatment and that he called the in charge of the local dispensary to inform him that JAA was going there for treatment. He testified that JAA was treated and referred to Siaya and he reported the matter to Kogelo Police Station. He further testified that he later received a letter from Joseph Ogut Ojala, his area Chief summoning JAA to appear at the Chief's office at 9:00am so he went to the Chief's office and informed him that the person summoned could not attend because he had been injured by Omondi and had been referred to Siaya Referral Hospital.
11. PW1 recalled that when he entered the Chief's office, he found Omondi and his two sisters who complained why JAA could not go to the Chief's Office yet the injury was so minor that it could not prevent him from attending the meeting. He further testified that later, JAA went to him saying that



- he and Omondi and his sister had negotiated and that he had agreed to withdraw the assault complaint against Omondi. It was his testimony that he followed up with the village elder to guide the family of Omondi and JAA and elders who went and discussed over the sharing of land. He testified that the village elder later reported to him that the family meeting went on well, that Omondi was given one acre, three cows and that they even shared tea.
12. It was his testimony that after about two weeks, the village elder reported to him that Omondi wanted to sell the land that was given to his sister and that the said JAA informed PW1 that he was opposed to that sale as Omondi's mother was still alive. He further testified that after three days, JAA went to his office and reported that Omondi had chased him with a rungu over payment of Kshs. 20,000 being proceeds of sale of murrum extracted from their land. He testified that JAA told him that Omondi had refused to share out the money with him and chased him. He further testified that he called Omondi who told him that he was at Kisumu and had nothing to do with the money.
 13. PW1 testified that four days prior to the deceased's demise, JAA had reported to PW1 that Omondi had found a land buyer and was not willing to engage JAA so he, PW1, told JAA that he had to be involved in the transaction for sale of land which was still family land. He testified that he recorded his statement concerning the incident and what he knew. PW1 identified Omondi as the accused in the dock wearing a black mask.
 14. In cross-examination, PW1 stated that the distance between JAA's house and that of his mother was 40-50 meters. He further stated that the two children lived an isolated life and never moved out freely. It was his testimony that he arrived at the scene at about 2.55pm, on 18th November 2021 and that the police arrived later. PW1 testified that in the family meeting, it was resolved that Chrispine Omondi be given 1½ acre, his sister ¼ acre and the remaining left for JAA. He stated that the owner of the subject parcel of land was JAA's father and that the land was ancestral land but since Chrispine's mother was alive, allocation could only be made to his mother. He testified that after confirming JAA's death he called the police at Kogelo. He stated that he did not see or meet Omondi.
 15. PW2, JA, a minor, testified through an intermediary, CA, his maternal aunt and guardian as he was unable to communicate with the court directly. CA, the maternal aunt to the child was sworn as an intermediary and stated that she started staying with the child in January 2022 and that before that the child used to live with his father at Nyangoma Kogelo.
 16. She repeated what the child was telling her in dholuo on being asked questions by the prosecutor that his father was killed by Omondi the accused who was in court which the child said he saw Omondi kill his father at night. The child through the intermediary stated that he was in the house with his sister and father when Omondi killed his father by hitting him with a panga and metal on the head. The court observed that the accused was intimidating the child witness by clicking after which the child looked at him and hesitated to talk.
 17. The child through the intermediary testified that Omondi hit his father's head and that he saw brains from his father's head and that his father was also bleeding from the nose and head. The child testified that Omondi killed his father at his grandmother's house. The child further said that when Omondi hit the father, the child heard Omondi say that he was killing the father because of land. The child stated that an unknown lady went to their house at night and spoke to him and that he told someone else of what he saw Omondi doing to his father.
 18. The child further testified through his intermediary that he used to live with his father and MA his sister who was in the house when Omondi Killed the Childs' father. Further, that Omondi had gone to the child's home three times and that Omondi used to visit the child's father. The child stated that one day, he saw Omondi fight his father.



19. PW3 Lucy Akoth Obimbo testified that the accused Chrispine Omondi was her cousin. She testified that on 18/11/2021, she received a phone call at 5 pm that her uncle had died so she went home the following morning and confirmed that he was dead. She testified that there was land that had been shared to them, land that was their grandfather's. PW3 testified that her father had 3 brothers. She stated that she was given a portion of her father's land, ½ acre and Chrispine who lived in Kisumu was given a bigger portion.
20. PW3 testified that she wanted to sell her portion of land so as to buy land elsewhere and that her father had given her consent to sell her portion in the presence of the village elder and 3 other people. She testified that Chrispine also wanted to sell his land but the deceased declined to consent to the sale. She testified that she was aware that the Chief told the village elder to resolve the issue between the deceased and Chrispine.
21. It was her testimony that Bernard was Chrispine's father and that Bernard's land was not given to Chrispine as Chrispine was given his own parcel of land out of their grandfather's land. In cross-examination, PW3 stated that her uncle opposed the sale of the land by Chrispine because the latter would have nowhere else to go, and would suffer later.
22. PW4 No. 86706 PC Joash Koriese testified that he was the Investigating officer in this case and that on the 18/11/2021 at around 3.40 pm, they received information of a murder at Nyang'oma Kogelo sub-location so they proceeded to the scene where they found police officers from Kogelo Police Station, Area Assistant Chief, a huge crowd and 2 minor children of the deceased sitted outside the house and that 30 metres away, they found an abandoned house with the body of the deceased lying outside there.
23. It was his testimony that he found the deceased with a fractured skull and brain matter spilled all over and blood splashed near the wall of the abandoned house. He testified that they processed the scene and while still at the scene, he interrogated PW2 on what information he had and the family situation. It was his testimony that he found that the deceased lived with his children after his wife became mentally challenged and left the home for a while. He further stated that the deceased's first born child was physically challenged.
24. PW4 testified that they removed the body to Siaya County Referral Mortuary where an autopsy was carried out on 25/11/2021 by Dr. Juma Gabriel. On no objection from the defence, PW4 produced the Postmortem Report dated 25/11/2021 as PEX1 showing the cause of death of the deceased as severe head blunt trauma. Dr. Juma Gabriel Wekesa noted that the deceased had open skull injury and comminuted skull fractures, Brain himation and deep cut on the occipitoparietal area. He further testified that on the 25/11/2021, the accused was arrested and taken to court through Miscellaneous Application No. 97/2021 where orders were obtained to detain him until Investigations were completed. He further testified that on the 30/11/2021, they escorted the accused person to Jaramogi Oginga Odinga Teaching and Referral Hospital (J.O.O.T.R.H) where he was mentally assessed and found fit to plead.
25. PW4 testified that from his investigations, the accused was a nephew to the deceased and that the two had disputes which had been reported to Kogelo Police Station under OB. No. 7/24/8/2021 regarding an assault against the deceased, where the deceased was the complainant against the accused. He produced the OB extract from Kogelo Police Station as PEX2.
26. He further testified that he also found that the Area Chief had summoned the deceased through the Assistant Chief to appear before him on the 26/8/2021 in respect of a complaint lodged to the Chief against the deceased. PW4 produced the summons dated 24/8/2021 as PEX3. He stated that he was given the resolution reached after the matter was referred to the elders, on 10/9/2021 which he



produced as PEX4. It was his testimony that on the 6/12/2021, the accused was charged before court. He stated that he did not know the accused before he was arrested and he identified the accused as the person they had arrested in connection with the Murder of the deceased.

27. In cross-examination, PW4 stated that it was not true that he only relied on statements of the two minors and stated that only one witness was a minor. It was his testimony that they also gathered circumstantial evidence. He stated that Chrispine resided in Kisumu as he had no house at the homestead.

The Defence Case

28. Placed on his defence, the accused person Chrispine Omondi Onyore testified as DW1 and stated that he worked as a matatu tout and that on the 17/11/2021 he was in Kisumu. He stated that in the morning, as his wife runs a hotel, he escorted her to work then returned to his house since he was unwell. He stated that he stayed in the house until 3.30pm when he left for work to earn some money and that he proceeded to the car wash where he stayed for a while and returned to his house. It was his testimony that he saw a call on his phone from his step brother who asked him if he knew what had happened and informed him that his uncle had been found dead.
29. DW1 testified that he went and informed his wife and the following day, he and his wife travelled to his rural home and found family members gathered. He testified that he and his step brother left for the mortuary where he saw his dead uncle who had a swelling on his head. He further testified that they started planning for his burial and met a DCI who said it was a police case so a postmortem had to be done. It was his testimony that the postmortem was rescheduled twice until a Friday and that thereafter, the DCI told them to go record their statements. He stated that on a Monday, he was taken to court and charged with murder.
30. DW1 denied killing his uncle stating that they had issues involving land with his uncle but that those issues were resolved. He testified that the Chief referred them to the Assistant Chief who referred them to the village elder who gave them a date for discussion and they attended the meeting and resolved the pending issues and after resolving the issues, their relationship was restored.
31. In cross-examination, DW1 stated that he knew JAA who lived in his grandfather's home and was his younger uncle. He admitted that they had a dispute with the deceased and that they had fought on an occasion over the same dispute. He testified that he could not tell if other people had disputes with his uncle him because he never lived at home. In re-examination, DW1 stated that he and his uncle fought and were both injured near the eye.
32. DW2 Milka Adhiambo Odenge, the accused's wife testified that on the 17/11/2021 they woke up in the morning and the accused escorted her to the road to do her cooking. It was her testimony that the accused left home at 3 pm then returned at about 7 pm and thereafter he never left the house. She testified that the following day, the 18th November 2021, they got information of the death.
33. In cross-examination, DW1 stated that on 17/11/2021 they were in Kisumu with the accused. She testified that she was with the accused at night and that she had no idea if there was a dispute with the deceased but knew that there was a land dispute which was resolved. She stated that she knew the accused had earlier on assaulted the deceased. She stated that in Kisumu, she was with her children, the eldest of whom was 17 years old, called D and who had not come to testify as he was in school.



Analysis and Determination

34. 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:
- 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 on the part of the accused person - “actus reus”.
 - c. That the said unlawful act of omission or commission was committed with malice aforethought - “mens rea”.
35. The fact of death of the deceased was proved beyond reasonable doubt by the evidence of all prosecution witnesses who testified of the death of the deceased JAA. The fact and cause of death was confirmed through the postmortem report produced by PW4 that was filled done by Dr. Juma Gabriel Wekesa who carried out the autopsy on the body of the deceased and arrived at a conclusion that the cause of death was severe head blunt trauma.
36. As to whether the deceased’s death was caused by an unlawful act or omission and as to who committed the unlawful act or omission, as stated herein above, the death of deceased was as a result of severe head blunt trauma. Dr. Juma Gabriel Wekesa who carried out the autopsy noted that the deceased had open skull injury and comminuted skull fractures, Brain himation and deep cut on the occipito-parietal area.
37. In *Gusambizi Wesanga v Republic* [1948] 15 EACA 65 the Court stated that:
- “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.”
38. The evidence before court points to an unlawful act that led to the death of the deceased. The deceased, from the injuries sustained on his head as per the post mortem report, could not have inflicted those injuries on himself. Accordingly, I find and hold that the prosecution have proved beyond reasonable doubt that the death of the deceased was unlawfully caused.
39. As to whether it was the accused who caused the unlawful act that led to the deceased’s death, the prosecution sought to rely on the testimony of PW2, a minor and the deceased’s son who alleged to have witnessed his father’s killing. The court allowed the minor to testify through an intermediary, CA, his maternal aunt and guardian. This is permitted under Article 50(7) of *the Constitution* which provides that:
- “In the interest of justice, a court may allow an intermediary to assist a complainant or an accused person to communicate with the court.”
40. Thus it is clear that the role of an intermediary cannot be to offer evidence on behalf of a vulnerable complainant and or an accused person, but to assist such vulnerable person or accused present their own case or position in court by way of evidence. In such cases, it is the witness who will be cross examined through the intermediary and not the intermediary. The court of appeal in appreciating



this position, in Criminal Appeal No. 52 of 2015 of *John Kinyua Nathan v Republic* [2017] eKLR, expressed itself as follows:

“The expertise, possession of special knowledge or relationship with the witness must be ascertained by the trial court through examination of the prospective intermediary before the court appoints him or her. It goes without saying, in view of that role, that an intermediary must subscribe to an appropriate oath ahead of the witness’ testimony, understanding to convey correctly and to the best of his/her ability the general purport of the evidence. The trial court must then give directions to delineate the extent of the intermediary’s participation in the proceedings.”

41. Further on that role of the intermediary, the Court in the above case stated that:

“The intermediary’s role is to communicate to the witness the questions put to the witness and to communicate to the court the answers from the victim to the person asking the questions, and to explain such questions or answers, so far as necessary for them to be understood by the witness or person asking questions in a manner understandable to the victim, while at the same time according the victim protection from unfamiliar environment and hostile cross-examination; to monitor the witness’ emotional and psychological state and concentration, and to alert the trial court of any difficulties.”

42. The minor, PW2 through the intermediary, and in camera, as he could not communicate with the court properly and audibly due to his young age and appearing very timid and scared stated that his father was killed by Omondi whom he identified as the accused at night and that he witnessed the accused hit his father with a panga and metal on the head. The minor further testified that when the accused hit his father’s head, he saw brains from his father’s head and that his father was also bleeding from the nose and head. The minor also testified that he heard the accused say, as he was hitting the deceased, that he was killing the father because of land.

43. When the minor started telling the court what the court observed was not what he saw or heard, the court stopped that minor from testifying. It is noteworthy that as the child was testifying, the court noted that the accused was intimidating the child witness by clicking after which the child would look at him and hesitate to talk.

44. PW1, the area Assistant Chief testified that they found the deceased’s body lying face down, with the head cut with an axe and the left hand was on the back while on the wall of the house there was blood and brain matter from the head of the deceased just as the minor PW2 had told the court.

45. PW1 testified of the numerous conflicts between the deceased and the accused occasioned by the accused’s demand to get a portion of the ancestral land which the deceased declined stating that the accused would sell the piece of land and leave his mother, who was still alive destitute. PW1 also testified that the accused had even assaulted the deceased but the deceased subsequently withdrew his complaint.

46. In his defence, the accused gave an alibi to the effect that he was in Kisumu on the day of the incident as he was sick and only left the house to take his wife to work in the morning and later in the afternoon when he went to a carwash to look for money. He further testified that he and his uncle the deceased had resolved their issues after agreeing to the mode of distribution of the ancestral land at the Chief’s place. He stated that he later learnt of the deceased’s passing and the following day he and his wife proceeded to the deceased’s home. The accused’s wife testified as DW2 corroborating the accused’s alibi.



47. I have considered the evidence presented by both the accused and the prosecution and note that the testimony of PW2, the child, though given through an intermediary was specific and detailed on how the deceased met his death. The testimony even corroborated that of PW1, who saw the deceased's body at the scene on the deceased's brain matter on the wall as well as the location where the deceased's body was found.
48. I have considered the accused's alibi and I am alive to the principle that by setting up an alibi defense, the accused does not assume the burden of proving the alibi. See (*Ssentale v Uganda* [1968] EA 36). The prosecution always bears the burden of disproving the alibi and proving the appellant's guilt (*Wang'ombe v Republic* [1976-80] 1 KLR 1683).
49. However, the accused was required to raise the defense of alibi at the earliest opportunity to give the prosecution and the investigating officer time to check it out to determine its veracity or lack thereof. The principle has long been accepted that an accused person who wishes to rely on a defence of alibi must raise it at the earliest opportunity to afford the prosecution an opportunity to investigate the truth or otherwise of the alibi. In *R v Sukha Singh s/o Wazir Singh & Others* (1939) 6 EACA 145, the former Court of Appeal for Eastern Africa upheld a decision of the High Court in which it was stated:
- “If a person is accused of anything and his defence is an alibi, he should bring forward that alibi as soon as he can because, firstly, if he does not bring it forward until months afterwards there is naturally a doubt as to whether he has not been preparing it in the interval, and secondly, if he brings it forward at the earliest possible moment it will give prosecution an opportunity of inquiring into that alibi and if they are satisfied as to its genuineness proceedings will be stopped”.
50. I note that the prosecution did not call for evidence to disprove the alibi raised by the accused and therefore this court must weigh the alibi against the evidence of the prosecution, noting that the accused was under no obligation to adduce any evidence or challenge the evidence adduced by the prosecution witnesses. I have compared the alibi by the accused and the evidence by the prosecution witnesses. My view on the matter is that the alibi by the accused is not credible or truthful. The accused was well represented by an advocate appointed by this court. He had all the opportunity to raise by way of notice his alibi defence to the prosecution prior to and or during commencement of the hearing of this case. He chose not to raise that alibi defence and raised it during the defence so that he can ambush the prosecution not to counter it.
51. The accused stated that after meeting the Chief, his relationship with the deceased was restored however PW1 told the court that four days to his demise, the deceased reported to him that the accused had found a buyer and was not willing to engage the deceased on the transaction. From this testimony of PW1, it is clear that the accused's relationship with the deceased was not restored.
52. PW1 a minor whom the accused was intimidating in court could not express himself well and had to be aided by an intermediary. He stated that he knew the accused and that he saw the accused kill the deceased. There is nothing to demonstrate that PW1 was lying to court. I believed his brief testimony on what he saw happen to his father, the deceased.
53. Taking all the above into consideration, I am persuaded beyond reasonable doubt that all the circumstantial evidence satisfies the principles of circumstantial evidence as enunciated in numerous



authorities including the case of *R v Kipkering Arap Koske & Another* [1949] 16 EACA 135, in the Court of Appeal for Eastern Africa had this to say:

“In order to justify 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 his guilt. The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden which never shifts to the party accused.”

54. This principle was expanded by the same Court in *Simoni Musoke v R* [1958] EA 715, citing with approval the following passage from the Privy Council’s decision in *Teper v R* [1952] AC 480 at P.489:

“It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference”.

55. In the instant case, I am persuaded beyond reasonable doubt that the evidence adduced by the prosecution creates a tight, unbroken link pointing at the accused as the one who caused the unlawful death of the deceased, and that the motive for the fatal attack was no doubt the existing land dispute between the deceased and the accused person herein. I thus find that the prosecution proved beyond reasonable doubt. that it was the accused herein and no other person who unlawfully attacked and fatally killed the deceased JAA.

56. Finally, as to whether the accused had malice aforethought when he unlawfully killed the deceased, the Court of Appeal in *Peter Kiambi Muriuki v Republic* [2013] eKLR reiterated its previous holding regarding malice aforethought in the case of *Nzuki v Republic* (1993) KLR 171, where it was 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:

The intention to cause death;

The intention to cause grievous bodily harm;

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. It does not matter in such circumstances whether the accused desires those consequences to ensue or not and in none of these cases does it matter that the act and the intention were aimed at a potential victim other than the one who 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 – v- Director of Public Prosecutions*, {1975} AC 55.”



57. In the case of *Rex v Tubere S/O Ochen* 1945 12EACA 63 the predecessor to the Court of Appeal laid down the guidelines for trial Judges in 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”.
58. 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 Ngogho Mutiso* 2008 eKLR and *James Masomo Mbacha v republic* 2015 eKLR, the courts have sufficiently inferred malice aforethought from the nature and type of weapon used and multiple severe bodily injuries to the victim.
59. In this case, Dr. Juma Gabriel Wekesa who carried out the autopsy on the body of the deceased and prepared the postmortem report as produced by PW4 as PEX1 noted that the deceased suffered injuries of open skull and comminuted skull fractures, Brain himation and deep cut on the occipito-parietal area that led him to conclude that the cause of death was severe head blunt trauma. PW1 testified that the deceased’s head was cut with an axe and that there was blood and brain matter from the head of the deceased on the walls of the house where the lifeless was found.
60. The aforementioned evidence points to a clear manifestation of malice aforethought on the part of the accused person. The accused intended to cause grievous harm on the deceased as demonstrated by the nature of injuries sustained by the deceased. I therefore find that the prosecution has proved malice aforethought against the accused person beyond reasonable doubt.
61. In the end, I find and hold that the prosecution has established beyond reasonable doubt all the elements of the offence of murder as charged. I find the accused person herein Chrispine Omondi Onyore Guilty of the offence of JAA murder as charged under section 203 of the Penal Code. I convict him accordingly. Sentence shall be pronounced after records and mitigation.

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

R.E. ABURILI

JUDGE

