



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO. 27 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

BONIFACE KABUCHO KURIA.....ACCUSED

JUDGEMENT

1. The accused **BONIFACE KABUCHO KURIA** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which were that on the night of 22nd December 2014 at New Donholm Estate within Nairobi County murdered **WILLY MWONGERI MBUGUA**.

2. He took his plea before Lesiit J. on 10/3/2015 when a plea of not guilty was entered for the same and on 5/5/2015 stayed the accused person application for bond for a period of one month to enable the state complete investigations. On 16/6/2015 the accused appeared before Mutuku J. for the hearing of the application and by a Ruling dated 26/6/2015 released him on bond pending trial. After several false starts at hearing on 17/7/2017 the matter commenced for hearing before me.

PROSECUTION CASE

3. The accused and the deceased were good friends with interest in music and Dee-jaying. The accused was well-known to the family of the deceased including his girlfriend at that time. In the music industry he went with the name DJ "C" or DJ Captain at the Academy and was teaching music, he had DJ equipments which he wanted to upgrade. The deceased in addition to being an upcoming DJ was a caretaker of a building owned by a relative at New Donholm estate where he had been given a room to live in. That the two were good friends was confirmed through the stories the deceased told **PW1** about him and the fact that the mother would get him through the accused in addition to photos on their face book page.

4. The last time the deceased was seen alive was on 22/12/2014 when he visited his mother **PW4 ANNE WAIRIMU MBUGUA** at their home in Githunguri, Kiambu County. He was with his girlfriend a lady known as **Trisa** and had earlier asked his mother to get for him some money which he needed towards the purchase of DJ Equipment. It was her evidence that during the time they were together the deceased kept on receiving calls on his cell phone and when asked who the caller was he answered that it was from a friend that was assisting him get the equipment. At some stage the deceased ran out of airtime and had to use **PW4's** phone to call his friend who she confirmed was the accused. She gave him Kenya shillings three hundred and ninety thousand (Kshs.390,000/=) in cash which he took with him back to Nairobi leaving behind his girlfriend whom they chatted with on "Whatsapp" on the way until he confirmed that he was at Githurai.

5. On 23rd December 2014 as a loving mother **PW4** called the deceased to find out whether he had reached Nairobi and whether he was coming back home only to find his cell phone offline. That was the position upto 24th December 2014 when she called her sister **PW3 EUNICE NJERI NGUGI** to check whether she had heard from the deceased who was her caretaker but she was also offline. **PW3** was eventually called by a brother of the deceased and informed that the same had been murdered at her rental flats. She proceeded to the place where she found the house where the deceased was living in messed up, things scattered in the boxes and ransacked, blood stains on the wall and under the sofa set.

6. **PW1 MARY MAUREEN GATHONI MBUGUA** a sister to the deceased confirmed that at the time of his death he used to be called to clubs to be a DJ. On 23rd December 2013 at 6.00 a.m. **PW4** her mother called her on phone with information that the deceased could not be reached. She attempted to reach the same but could not get through to him. Having not managed to get to her brother on 24th December 2013, she decided to call **PW2 STEPHEN NGUGI MUTERO** who was a caretaker at a nearby flat and a friend of the deceased to go and check on him. **PW2** proceeded to the building and reported back to her that the deceased was dead in his room with the house turned upside down which she confirmed upon going to the scene.

7. **PW2's** evidence was that on 22nd day of December 2014 the deceased called him at 11.00 p.m. and informed him that he had just returned from Kiambu and was tired and that he would be cleaning his flat the next day which when he does water would go to the other flat. At about 10.00 a.m. the following day he was called by a tenant of the flat under the deceased care who did not have water so he went with her to the flat and opened for her water. He also switched off lights at the common areas which were still on. He did not see the deceased and since it was their practice to switch off and on light for each others' flat when one was away, he did not find it unusual as he had indicated he would be away. On the 23rd another tenant opened for him the gate to enable him switch on the light.

8. It was his further evidence that on the 24th morning **PW1** called him to ask whether the deceased was around and he told her that he had left. She later called him to go and check on him at the flat only to find the door not locked and the deceased dead inside. He confirmed having seen the deceased last on 22nd at 11.00 p.m. alone.

9. **PW5 ALEX KARANJA** a brother of the deceased testified that on 22nd December 2014 at 8.45 p.m. he sent for the deceased Kshs.5050/= through his M-pesa account and called him at 9.00 p.m. to confirm whether he had received the cash and the deceased who was in a *matatu* told him that he would call later but he did not. On 23rd **PW4** their mother called him with information that he was out of reach. He tried calling him but he was offline upto 24th when he advised his sister **PW1** to go to check on him at the flat. He was later called by a friend of **PW1** whom she had sent to the flat with the information that the deceased was sick. He proceeded to where the body of the deceased was found dead and the house ransacked as if someone was looking for something. All electric items in the house were not taken save for the laptop, hard disc, digital camera, earphones and his cell phone which he had bought for the deceased for Dee-jaying work. He then provided the police with information on the deceased friends. It was his evidence that he did not know accused but would see him on the deceased face book page and photos.

10. He stated that later on he received from the deceased's girlfriend the numbers of those he had communicated with last which she said belonged to DJ "C" who was the deceased's best friend in the music industry which line was off between 24th but on 25th and 26th he managed to call him but when asked the whereabouts of the deceased he disconnected and switched off the phone. It was his further evidence that on 19th December 2014 the deceased had told him that they were planning to open a DJ school with DJ "C" the accused and needed money for equipments.

11. **PW7 PC KUPUCHOR KIPSANG** a scene of crime officer documented the scene and took photographs of the deceased body which had several stab wounds. **PW8 DR. CHALRES K. MUTURI** performed post-mortem examination on the body of the deceased who had multiple stabbed wounds on the left side of the body twenty two (22) in number and as a result thereof formed an opinion that the cause of death was multiple stab wounds to the neck, chest and abdomen. **PW9 LAWRENCE KINYUA MUTHURI** a government analyst carried an analysis of the items called at the scene against the blood sample of the deceased and formed an opinion that the DNA profile from the blood stains on the knife recovered from the scene were of unknown male while those generated from the T-shirt matched the DNA profile of the deceased.

12. **PW6 PC NIXON NGAO MBINGU** arrested the accused in the Nairobi CBD at the Academy of DJ Lighter in the company of **PW10**, whose phone they took and when asked of his movement the night the deceased died the accused stated that in the evening he was in town before proceeding to Githurai. He was asked whether he was in Donholm area on the day of the murder as per the Safaricom data but he said he had not been. **PW10 CORP KENNEDY CHERAMBUS** the investigating officer stated that with the assistance of Safaricom they confirmed that the deceased's mobile phone went off on 22/12/2014 at 23.30 hours having left for Kiambu for the City Centre. They then received information from one **Dan Wafula Wekesa** a friend of the deceased and the accused that they were in the process of starting a business together and had plans of buying a DJ Mixture machine for which the deceased was to secure the funds.

13. It was his further evidence that they subjected the mobile phone belonging to the accused to analysis and confirmed that he was within the vicinity of Donholm Estate where the deceased was living through Mombasa road. It was confirmed that the serial number of the mobile phone the accused had at the time of his arrest was not the one he had at the time of murder. It was his evidence that the motive of the killing was to obtain the cash the deceased had received from his mother as the accused was in constant communication with the deceased during that time and the house of the deceased was ransacked.

14. He stated that the accused had on the material day sent sms to the deceased and that none of the items stolen from the house of the deceased were recovered from the house of the accused. He further stated that the accused did not offer any reason for not participating in the funeral of the deceased. He stated that one Dan Wekesa a friend of the accused and deceased was a suspect but was eliminated through his call data record.

15. **PW11 QUINTO ODEKE** an employee of Safaricom produced data record from the period between 20/12/2014 to 10/2/2105 in respect of the subject mobile phones confirming that the accused was in Donholm area at 22.35 hours as well as 23.08 hours and that there were communication between the deceased and the accused while in the same location with the last communication between them being at 20.43. **PW12 SIMON MOKAYA** went to the scene and recovered a kitchen knife with blood stains under a sofa where the deceased was lying and attended post-mortem examination where he collected blood samples. **PW13 CORP. MOSES KABORO** received the information of the death of the deceased from **STEPHEN NGUGI MUTERO PW2** and visited the scene with him.

DEFENCE CASE

16. When put on his defence the accused gave sworn statement and called two witnesses. It was his evidence that he was a DJ and electrician. He confirmed that the deceased was his friend and he used to communicate with him. He knew his sister, brother and mother. He confirmed that he was the deceased's mentor who had asked him how they could grow their business. He communicated with him on 21/12/2014. On 22/12/2014 he left Githurai for the City Centre at 2.00 p.m. to collect some clothes from **DW2** and was there until 9.00 p.m. when he left back for Githurai getting home at 10.00 pm. He was with his neighbour **DW3** upto 11.30 p.m. then washed his clothes upto 1.00 a.m. before retiring to bed upto 23rd. He stated that he was in communication with many people including the deceased and did not leave the house upto 24th when he got a call from the deceased's girlfriend asking whether he had heard of the story of the deceased killing. He thereafter received

a call from Edward Karanja a cousin of the deceased. He said that he did not attend the burial of the deceased as he had received threats from his brother and cousin.

17. Under cross-examination he confirmed having spoken to the deceased on 22nd at 11.00 pm. through 'Whatsapp' then called him and he called him back. He confirmed that the deceased had told him that he was going to get money from his mother for the DJ equipment purchase. He confirmed that they had a meeting together on 18th. **DW2 ERUSTUS MWANGI NJEHI** stated that he was with the accused on 22nd December 2014 which was a Monday and again on Sunday 23rd at his shop next to Tuskys-Beba Beba. He stated that he did not know where the accused went to after 9.00 p.m. **DW3 IRENE NJERI KAMAU** stated that the accused was his neighbour in Githurai. She testified that on 22nd December 2014 they met at about 10.00 p.m. when the same went to the plot and was with him upto 12.00 p.m. she did not see him thereafter.

SUBMISSIONS

18. At the close of the defence case the accused filed written submissions while the prosecution opted to rely upon their submissions at no case to answer. On behalf of the accused it was submitted that the mobile phone location reference produced by **PW12** did not put the accused and the deceased together. It was submitted that the accused was a great friend of the deceased who did not go into hiding and neither was any of the items stolen from the deceased's house recovered from him. It was stated that the accused did not attend the burial of the deceased as he had received threats from **PW5** the deceased brother and that his alibi was confirmed by **DW2** and **DW3** who confirmed having been with him in the material day which was never investigated by the prosecution for which the case of **WANGOMBE v REPUBLIC [1976-80] KLR 1682** and **SSENTALE V UGANDA [1968] EA 36** were tendered in support.

19. It was submitted that there was no eye witness to the crime and therefore the prosecution case is purely based on circumstantial evidence which failed to meet the test set in **REPUBLIC v KIPKERING ARAP KOSKE & ANOTHER [1949]** as applied in the case of **REPUBLIC v DANIEL MUSYOKA MUASYA & 2 OTHERS eKLR [2014]**. It was therefore submitted that the evidence presented before the court failed the test of circumstantial evidence and lacks cogency. It was contended that the entire case before the court was largely founded on suspicion because the accused kept in touch with deceased and knew that he had procured money from his mother for their intended business venture together with one Dan Wekesa who failed to testify.

20. The prosecution opted not to make further submissions but relied upon the evidence on record and the earlier submissions where it was submitted that **PW10's** evidence confirmed that the deceased and the accused were in the process of starting a business together and had a meeting on 18/1/2014 for that purposes and that the motive of the murder was the Kshs.380,000/= the deceased had obtained from his mother.

ANALYSIS AND DETERMINATION

21. For the State to sustain a conviction on a charge of murder, they are under legal duty to prove beyond any reasonable doubt the following ingredients of the offence:-

- a) *The fact and the cause of death.*
- b) *That the said death was caused by unlawful act of omission or commission on the part of the accused person.*
- c) *That accused acted with malice aforethought.*

22. The death and the cause thereof is not in dispute. The deceased became "mteja" between the last time he spoke to his loving mother on 22nd December 2014 and when she called him next on 24th December which made the family send **PW2 STEPHEN NGUGI MUTERO** to check on him. **PW2** confirmed that he last saw the deceased alive on 22/12/2014 at 11.00 p.m. and lo and behold found him dead with multiple stab wounds all over his body. The body was then moved to Kenyatta University mortuary after **PW7** had taken photographs thereof where **PW8 DR. CHARLES K. MUTURI** conducted a post-mortem examination thereon and formed an opinion that the cause of death was multiple stab wounds to the neck chest and abdomen. It therefore follows that the fact and cause of death was proved beyond any reasonable doubt.

23. The only issue in controversy is whether the said death was caused by unlawful act on the part of the accused person:- As submitted by the defence and confirmed by the prosecution witnesses there was no material eye witness to the attack. No witness saw the deceased being assaulted and attacked by any person. The last person to had seen him alive was **PW2** who spoke to him at 11.00 pm. and testified that though the deceased told him that he was tired having come from Kiambu County, he was in good health. **PW4** his loving mother confirmed that they last communicated with him through the now famous mode of communication "Whatsapp". He informed her that he had reached Githurai having followed Route number 145 – Ruiru – Githurai – Town and like a loving boyfriend sent his girlfriend Kshs.1,500/= between 10.30 – 11.00p.m. to make her hair the following day.

24. It is therefore clear to my mind that as at 11.00 p.m. the deceased was alive and in his house at New Donholm Estate where he was holding the fort for his aunt as a caretaker while moon lighting as a DJ (Disc Jockey). His mother had given him Kshs.390,000/= in cash while his brother had during the day sent to him through the Kenyan revolutionary money transfer system M-pesa Kshs.5,050/=. **PW5** also confirmed that he was alive and in a *matatu* as at 9.00p.m. On 23rd December 2014 he was found in his house dead with several stabbed wounds.

25. When his house was checked by those who knew it, **PW2**, **PW1** his sister, **PW5** his brother the following issues stood out:- most of the items in the house were scattered everywhere and ransacked, the door was not locked so there was no sign of forced entry, the only items missing apart from digital camera and his cell phone were items used in the DJ trade, the carpet was blood soaked and there was blood on the

walls. A kitchen knife which **PW1** confirmed was therein with blood stains was recovered under the chair.

26. The prosecution case against the accused is therefore solely based on circumstantial evidence and the law on circumstantial evidence is now well settled. Justice Lesiit in **REPUBLIC v NICHOLAS NGUTI BANGWA [2015] eKLR** had this to say:-

“26. Regarding circumstantial evidence the leading case is REP v. KIPKERING ARAP KOSKEI & ANOTHER 16 EACA 135, where the Court held:-

“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.”

27. In order to test whether the circumstantial evidence adduced by the prosecution meets the legal threshold it must meet the principles set out in the case of **ABANGA alias ONYANGO V. REP CR. A NO.32 of 1990(UR)** where the learned Judges of the Court of Appeal stated thus:-

“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 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.”

27. The Indian Supreme Court in the case of **STATE OF RAJASTHAN v RAJA RAM, CRIMINAL APPEALS NO. 815-16 OF 1996** it was held as follows:-

“14. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested on the touch-stone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.

15. In **Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh, (AIR 1952 SC 343)**, it was observed thus:- **AIR PP 345-46 par 10**

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

28. This case must therefore be looked against the stated touchstone of the law and the evidence tendered before me shows the following circumstantial evidence:- The accused and the deceased were good friends who were in the process of establishing some joint DJ business for which the deceased was to put in some seed money which in addition to his Kshs.90,000/= which he had given to his mother, she on the other hand secured for him Ksh.300,000/=. As at the time of his death the deceased was carrying in hard currency the said sum of money.

29. It is not disputed that the accused and the deceased and a friend known as **Dan Wafula** as per the evidence of **PW10** had a meeting thereon on 18th December 2014. On 22nd when the deceased went for the sum of money from his mother the accused was in constant communication with him and as per the mobile phone data records produced in court by **PW11 QUINTO ODEKE** the accused was the last person to had communicated with the deceased before his mobile phone went off. The said date further confirmed that the accused was within the Savannah Donholm Area. At the time of his arrest the accused person was not using the handset which he had as at the time when he last communicated with the deceased and the said line was off from a period of two (2) days thereafter.

30. The evidence on record confirms that the only people who knew that the deceased had money was his mother, his girlfriend and the accused. The two ladies were in Githunguri as at the time when the deceased met his untimely death with the only person placed at the scene by use of cell phone data records being the accused. The other person of interest **Dan Wekesa** who knew of the business venture was eliminated by **PW10** and treated as a witness thereby leaving only the accused as the offender.

31. All the items stolen from the house of the deceased in addition to the said money which was never recovered were as stated herein those that are used in the trade of Dee-jaying. The accused door was not locked when he was found dead, neither was there any evidence of forced entry therefore confirming that whoever gained entry therein was a friendly person and the only person established through evidence to had been closer to the deceased through **PW1** his sister was the accused. In his defence he confirmed having been that close with the deceased. He further confirmed having met with the same on 18th of December and having communicated with the same on the material day.

32. I have also taken into account the conduct of the accused:- On the 18th of December they had a joint meeting where their plan for a business venture was consummated. On 22nd December 2014 according to the evidence of **PW4** he kept on calling the deceased and when she asked the deceased who he was he told her that it was his friend who was assisting him get the equipment. This was confirmed by the evidence of **PW11** and the data records produced. There is no evidence that the accused attempted to call the deceased after the 22nd of December. When **PW5** called the accused through the number given by the girlfriend of the deceased on 24th the same was off. His name was given as DJ “C” and on 26th he was able to get through to him and when asked of the whereabouts of the deceased he did not say anything but switched off his line thereafter and having taken note that the accused and the deceased were together on 18th December and on

19th December the deceased confirmed to **PW5** that they were in the process of starting a DJ school together it was reasonably expected of him to look for the deceased which he did not.

33. With the prosecution having established circumstantial evidence stated herein this therefore brought the accused under **Section 111 (1)** and **119** of the **Evidence Act** of a statutory rebuttable presumption of the existence of facts which provides as follows:-

“Section 111(1) When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within the knowledge of such person is upon him:-

Provided that such burden shall be deemed to be discharged if the court is satisfied by evidence given by the prosecution, whether in cross-examination or otherwise, that such circumstances or facts exist:-

Provided further that the person accused shall be entitled to be acquitted of the offence with which he is charged if the court is satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused person in respect of that offence.”

“Section 119. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

34. When confronted with the prosecution case the accused offered an alibi defence and stated that he was not at the scene of the murder. Justice Mutuku in the case of **REPUBLIC v GNK [2017] eKLR** had this to say on alibi defence:-

“In respect to the defense of alibi, I am alive to the principle that by setting up an alibi defence, the accused does not assume the burden of proving the alibi (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).

However, the accused was required to raise the defense of alibi at the earliest opportunity to enable 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 Republic 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 . . .

In **FESTO ANDROA ASENUA & ANOR v UGANDA, CRIMINAL APPEAL NO.1 Of 1998** the court made the following:-

“We should point out that in our experience in Criminal proceedings in this Country it is the tendency for accused persons to raise some sort of alibi always belatedly when such accused persons give evidence. At that stage the most the prosecution can do is to seek adjournment of the hearing of the case and investigate the alibi. But that may be too late. Although for the time being there is no Statutory requirement for an accused person to disclose his case prior to presentation of his defence at the trial, or any prohibition of belated disclosure as in the U.K. Statute cited above, such belated disclosure must go to the credibility of the defence.” (Emphasis added)

35. I am persuaded by the above holding and have looked at the accused defence herein in which he confirmed that he was in communication with the deceased on 21st December 2014 but is silent on 22nd December 2014 which communication has been confirmed by the data record though he confirmed communicating with him at 11.00 p.m. when the same confirmed that he had visited Kiambu for the money. It is his evidence that he left town at 9.00 p.m. and proceed to Githurai at 10.00 pm. **DW2 EDWARD NJEHI** could only account for the accused between 8.00 p.m. and 9.00 p.m. and **IRENE NJERI KAMAU** could only account for the accused between 10.00 – 12.00 P.M. This evidence is subjected against the cell phone data record which has placed the accused within the crime scene. The first communication with the deceased was with the accused who then died thereafter. I therefore find and hold that the prosecution evidence and the gap in the defence witnesses dislodged the accused alibi defence.

36. I am therefore satisfied that the hypothesis of the prosecution case that the accused with the knowledge that the deceased had the money which was to be his seed money for the purchase of DJ mixture, having confirmed the same through their communication, went for the same and killed him in the process taking not only the said money but also the other DJ equipments which the deceased had in his house has been established through the qualitative reliable and probable circumstances presented herein above which completed the chain connecting the accused and nobody else with the offence charged.

37. The final issue for determination is whether the same was committed with malice afterthought:- The evidence of **PW10** point to the motive of the killing being the money which the deceased had for the purpose of buying a DJ Mixer for setting up the Academy. The evidence on record is that the killer of the deceased was looking for something in the house. If it was an ordinary robbery then the electricians in the house of the deceased would have been stolen. The evidence placed before the court is that save for the Kshs.390,000/= which the deceased had in his person, the other items taken therefore were as stated as those associated with DJ business.

38. Section 206 of the **Penal Code** defines malice aforethought as intention to cause death or to cause grievous harm. From the evidence of **PW6** the injuries inflicted upon the deceased proves beyond any reasonable doubt that the accused had the intention to cause the death of the deceased.

39. The accused in his defence has raised the issue of having received threats from the relatives of the deceased and that is why he did not attend his burial. By virtue of **Section 119** of the **Evidence Act** the court presumes that if the accused who has confirmed being a very good friend and mentor of the deceased was innocent, the natural thing which was expected from him was to attend the funeral so as to dispel the alleged innuendos. The other option was for the same to report the alleged threats to the police which he did not do, neither did he report to any police until he was arrested some three (3) months thereafter.

40. I am therefore satisfied that the prosecution has placed before me enough evidence to prove all the ingredients of the offence of murder and reject the accused defence herein and find the same guilty of the murder of his friend **Willy Mwongeri Mbugua** with malice aforethought and convict the same accordingly.

This is the order of the court.

Dated, signed and delivered at Nairobi this 27th day of February, 2019.

.....

J. WAKIAGA

JUDGE

In the presence of:-

Mr. Naulikha for the State

Mr. Maina for the Accused

Accused present

Court assistant- Karwitha