



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

HIGH COURT CRIMINAL CASE NO.32 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

WESLEY KIPYEGON MUTAI.....ACCUSED

JUDGMENT

1. The accused in this matter, Wesley Kipyegon Mutai, is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 28th day of July 2013 at Kimugul Village in Londiani District within Kericho County, he murdered Alphonse Nejeeye Fundi.

2. The trial of the accused proceeded before Ong'udi J, who heard five of the prosecution witnesses. After her transfer, the case proceeded before Muya J and thereafter was heard to completion before me, the accused having elected to proceed with the case from where it had reached on compliance with section 200 of the Criminal Procedure Code.

3. The prosecution case was presented through 11 witnesses. The evidence of PW1, Annah Chemutai Chervis, was that the deceased was her husband. On 28th July 2013 at 6.00 p.m., she was preparing supper. She was with a visitor, Jane and the deceased. The deceased then went to tether a calf. Shortly thereafter she heard screams from her son, Nelson Chepkwony. She told the deceased that it was their son who was screaming, and he entered the house, took a panga and ran towards the screams. After a while, she heard the deceased screaming that the accused had killed him. The accused was a son of PW1 from a previous relationship, and she had him at the time she married the deceased.

4. Upon hearing the deceased screaming, she went into the house and took a torch and left for the scene where the screams were coming from. On the way, she met the accused running back, so she hid behind a tree. The accused had a panga. She then continued to the scene, where she found the deceased lying on his back. She held his head but he was dying. She saw blood on his chest, and she screamed, prompting people to come to the scene, among them the Chief and Administration Police Officers. She identified the panga (exhibit 1), that the accused, her son, was holding on the day of the murder.

5. In cross-examination by Mr. Mutai, PW1 stated that the accused was her son whom she had had with one Stephen Chervis, whom she divorced in 1966. She had started living with the deceased when the accused was 7 years of age, and the deceased had brought the accused up as his own son. She had had two children with the deceased, who had taken care of and educated all the children. According to PW1, the accused had once sent a woman named Rebecca wife of Too to inform her that he would kill the deceased, but the said Rebecca had only told her this after the death of the deceased.

6. With respect to the material night, she stated on cross-examination that the night was dark. Nelson had been screaming saying he was being killed by Samuel, and she had seen the accused take a panga and follow the deceased. She had asked the accused to run and rescue Nelson. She maintained that she had hidden when she saw the accused passing, running from the scene. He was holding a panga in his left hand. She had found the deceased by following his groans, and she had heard him say "Wesley".

7. In re-examination, she stated that Nelson was in the forest as he screamed. PW1 had identified the accused as he passed near her. The deceased had cried saying "Wesley has killed me."

8. PW2 Nelson Cheruiyot Chepkwony, is a brother of the accused and a step-son of the deceased. His evidence was that on 28th July 2013 at 8.00 p.m., he was at the shops in Kimugul, then he left for home. When he reached home, he did not find his wife, and he returned to the centre. As he passed through the forest, he heard some noise and upon entering the forest, he found his wife making love with a man. He held both of them and started screaming, and his brother Wesley came to his rescue, as did his father, Alphonse, the deceased. When his brother, the accused, and the deceased arrived, the man who had been with his wife ran away. When the deceased arrived and found PW2, his wife and the accused, he started making noise at them. PW2 escorted his wife to her home.

9. According to PW2, when he returned, he met the Chief, and he also heard screams and went home where he found that the deceased had been killed. His evidence was that he did not witness the killing, so he did not know who killed the deceased. He identified the accused as his

brother and stated that they had no problem amongst themselves.

10. In cross-examination, it was his evidence that the deceased was his step father, while his father was Stephen Cheris. He was the 3rd child of PW1 and Stephen Cheris. He was living in the same compound as his mother. The accused was also staying in a house in the same compound.

11. PW2 stated that he did not go to the accused's house that night. The accused had arrived in the forest where PW2 and his wife were first, then the deceased had arrived after 15 minutes. PW2 and the accused had informed the deceased that they were looking for the man who had been with his wife, and the deceased then left. Both the deceased and the accused had pangas. PW2 stated that he had never seen the panga produced as exhibit 1 anywhere, and neither did he know the accused's panga.

12. PW3 was Eric Kiprotich Chepkwony, a son of PW1 and the deceased. He was at the Kimugul shopping centre on the material day at around 8.00 p.m. As he was heading home, he had found the deceased having already been injured. He was lying along the road, breathing his last. He left him and went home to tell his mother (PW1). He found her outside the house. He then called the Chief who came and called the police who arrived and took away the deceased's body. PW3 stated that he did not know who killed the deceased. He learnt the next day that a panga had been used to kill him. He had identified the panga, which had blood on it.

13. His evidence in cross-examination was that he had left the shops at 8.00 p.m. with his wife. They had found the deceased, who was breathing his last. They had gone home and informed his mother, PW1. They had explained what they had seen, and she had said that she had heard or sensed something but she had not gone to the scene. They had all gone to the scene together. He had been with his mother when she was screaming at the scene, and he had seen the panga which was found on the road by their cousin, Cherotich (PW5), who had brought it home. They had taken the panga to the police station. There had been no panga where they found the deceased.

14. The evidence of PW4, Daniel Kipnetich Rotich, the Assistant Chief of Kimugul, was that on 28th July 2013 at 9.00 p.m., he had received a call from Eric Chepkwony (PW3) saying there was a problem at their home as their father was lying on the ground, bleeding profusely. He had ran there but before he got there, he had met Nelson Chepkwony (PW2) who was Eric's brother. Nelson had told him that the deceased and the accused had quarreled and the accused had hit the deceased with timber. He had then gone to the scene and found the deceased lying down with a big injury on the abdomen. He had found many people there, including the accused and PW1. PW1 was saying that Wesley, the accused, had killed the deceased. PW4 had reported the matter to the D. O., Chepseon, and the police had come and taken away the body of the deceased.

15. His evidence on cross-examination was that he had found Nelson, (PW2) behind a shop looking worried. He said there was a fight between the accused and the deceased, and the accused had hit the deceased with timber on the head. When he got to the scene, the deceased was already dead, and PW1 was saying it is the accused who had killed the deceased. They had told her not to mention names.

16. According to PW4, who had known the family for many years, the relationship between the deceased and his step children, particularly the accused, was not good. PW1 was a wife of Cheris, the father of PW2 and the accused. The deceased was living in the home of the parents of PW1, where Cheris also used to live. PW4 further stated in cross-examination that there was a time that the accused fought with the deceased. He had not seen any weapon on the day of the deceased's death.

17. The 5th prosecution witness was Winny Cherotich Korir. Her evidence was that on the material day, at about 8.00 p.m., while she was at home, she had heard her mother Elizabeth Chepkwony, speaking on phone as if in shock. Her mother informed her that Alfonse, the deceased, who was their neighbour, had been killed. PW5 and her mother had gone to the deceased's home and on reaching near his home had met PW1. PW1 had shown them the body of the deceased where it lay on the ground, bleeding from the chest. PW5 had not seen anything next to the body. It had been raining that night, and they then went to PW1's house. On the way from the scene, PW5 saw a panga on the path and gave it to PW1. She identified it as the one that had been identified in court by PW1.

18. In cross-examination, PW5 stated that she and her mother had met PW1 with her grandchildren on the road. PW1 told them that the deceased had been killed, but she did not know who had killed him. She had shown them where his body was. The accused was not there when PW5 and her mother went to the scene, but he went there before they left for their house at 9.00 p.m. PW5 stated that as she ran, she hit the panga with her leg. She was carrying a child on her back so she gave the panga to PW1, who said that the panga was hers. The panga had been rained on.

19. PW6 was Edmond Kipkoech Bore. On 28th July 2013, at 8.30 p.m., he was at home having supper. He was called by his cousin, Eric (PW3) who informed him that something had happened at home. He had gone to Eric's home and found Eric with a torch outside the house. He had gone to him and seen Eric's father lying on the ground, unconscious and bleeding from the mouth and chest. PW6 and Eric had started screaming and people came to the scene, among them the Assistant Chief (PW4) and police officers.

20. Police officers from Chepseon had come with a vehicle and taken away the body of the deceased. PW6 had heard the accused's mother crying with a lot of pain, saying that the accused had killed Alfonse. Later, his sister (PW5) had found a panga and given it to Eric. PW6 had not seen the accused at the scene.

21. In cross-examination, his evidence was that he was the first to arrive at Eric's. That Eric, Benson, Hellen and Wesley live in one home. They were all at home but not at the scene, to which they came later. The Chief and police officers had gone to the scene first. The accused's mother was crying and saying that it was the accused who had killed the deceased. PW6 had seen Cherotich (PW5) give a panga to Eric.

22. PW7 was Ann Wangechi Nderitu, an analyst with the Government Chemist in Nairobi. She produced a report on an analysis carried out on 12th August 2013 at the Government Laboratory, Nairobi. The analysis was of blood samples of the accused, Wesley Kipyegon Mutai, blood sample of the deceased, Alfonse Nejeeyeye, a panga, a shirt with a double collar indicated as belonging to the accused, and a pair of trousers and jacket also indicated as belonging to the accused.

23. The examination of the items indicated that the shirt and jacket were not stained with blood. The panga was lightly stained with blood, but DNA profiles from the blood on the panga could not be generated.
24. DNA profiles had, however, been generated from items 'A' and 'B' the blood samples from the accused and deceased and were tabulated in the Government Analyst's report. No explanation was given by the witness with respect to the DNA profiles from the blood samples.
25. The 8th prosecution witness was No. 217921, Justus Burudi. He had been the DCIO Kericho from 2010 – 2013. On 29th July 2013, while on duty, the investigating officer had requested him to record a statement from a suspect who was in the cells in respect of a murder. The suspect was the accused in this case, Wesley Kipyegon Mutai. He had proceeded to the cell, called out the accused's name and taken him to his office. He had asked him the language he understood, and the accused had said he understood Kiswahili. PW8 had prepared a charge and cautioned the accused in Kiswahili that anything he said would be used in evidence against him. The accused had made a statement in Kiswahili language of what information he had, and had signed the statement after PW8 had read it back to him. PW8 produced the accused's statement as exhibit 4 as there was no objection to its production.
26. In cross-examination, PW8 stated that a statement under inquiry can be made by a police officer of the rank of inspector and above, and he was of the rank of Senior Superintendent of Police. He had taken the statement a day after the incident. He had not used any threats or inducement in obtaining the statement. He had recorded the statement in the presence of a relative of the accused, Nelson Chepkwony (PW2). I will revert to the contents of the statement, which was produced in evidence as exhibit 4, later in this judgment.
27. PW9 was No. 233211 Chief Inspector Elinor Wanjala Mwarigha. At the material time, she was the OCS, Chepseon. At about 10.00 p.m. on 28th July 2013, she had received a phone call from PC Ole Ntelel who was at the time attached to the AP Camp Kimugul. He had informed her that there was a murder that had occurred near Kimugul Shopping Centre and he required her assistance. She had called the OCPD Londiani for assistance with a vehicle and had proceeded to the scene with Senior Sgt Kamau, PC Ruto and PC Omondi of AP Camp Chepseon and the driver, PC Kilimo. They had found PC Ole Ntelel and the Assistant Chief Daniel Rotich (PW4) who had taken them to the scene. They had found the body of the deceased lying in a pool of blood near a cattle boma within the compound. The body had a deep stab wound in the chest and the deceased was bleeding from the mouth and chest. He had already passed away at the time PW9 arrived at the scene.
28. PW9 testified that she had asked the wife of the deceased (PW1) what had happened. PW1 had informed her that the deceased had gone to check whether the cattle boma had been closed, and after a few seconds she had heard him crying that "*Wesley is killing me!*". PW1 had gone to check and since it was dark and raining, she could not see well. She had then seen her son, the accused, running from the scene at the cattle boma towards his house. PW1 had feared for her life and had hidden herself.
29. PW9 further testified that PW1 informed her that after that, she went to the house and took a lamp and went towards the cattle boma. When she was inside, she heard her husband 'snoring' as if he was taking his last breath. She found her husband lying down with a deep stab wound on the chest and bleeding from the chest, and he was already dead. PW1 had then screamed for help from members of the public.
30. It was PW9's testimony that she had only interrogated the wife of the deceased that night. Since it was raining, she had not been able to interrogate anyone else, though there were many members of the public, family members of the deceased, as well as the area Assistant Chief and PC Ole Ntelel. The accused was not there at the time. She had then taken the body to the Kericho District Hospital Mortuary and advised the area Chief, Daniel Rotich, to bring all the family members to Chepseon Police Station on 29th July 2013, and they had all gone to the station at 10.00 a.m. Among them was the accused and his wife, whose first name PW9 recalled was Lucy.
31. PW9 had started by interrogating the mother and wife of the accused. When she interrogated the accused, he confessed to her that he was the one who had killed his step-father. She did not record his confession but called the DCIO Kericho (PW8) to do so as she was not qualified to record his confession.
32. PW9 had visited the scene on 29th July 2013 with DCIO officers Corporal Waweru and others. They had gone to the cattle boma where the deceased had died, and they also went to the accused's house. They had found the accused's wife and had interrogated her on what had happened the night before. According to PW9, the accused's wife had told them that the accused had gone out the night before and then she heard PW1 saying that the accused had killed her husband. The accused's wife had then gone to the house and slept.
33. Later, the accused had come to his house, taken water and started washing the clothes he had been wearing. PW9 and her colleagues had gone to the drying line with the accused's wife and she had shown them the clothes the accused had been wearing. They had found a t-shirt, a pair of trousers and a jacket, which were still wet on the line. The white t-shirt, trousers and grey jacket were produced in evidence as exhibit 5, 6 and 7 respectively. PW9 testified that they suspected that the accused had washed the clothes at night as they were stained with blood. The accused's wife had also wondered why the accused had decided to wash his clothes while she is the one who washes clothes. They had not recovered anything else from the scene. The panga had been brought to the station by Eric on 30th July 2013.
34. In cross-examination, PW9 stated that they had arrested the accused because of the dying declaration of his father, and because the accused had confessed to killing his step-father. They had not found any blood on the accused's clothes as he had already washed them.
35. PW10, No. 51581 Corporal Bernard Waweru of Londiani CID office was the investigating officer. He was at the time material to this case, stationed at the Kericho CID office. On 29th July 2013, he was instructed by the DCIO, together with his colleague, corporal Musembi, to proceed to Chepseon Police Station where a case of murder had been reported. They went to the station as instructed at around 10.00 a.m. On arrival at Chepseon, they were shown the suspect, the accused in this case, by the OCS. They then went to the scene where the offence had occurred, an area called Kimugul in Chepseon. They had gone to the homestead of the deceased. The body of the deceased had been moved to the mortuary but they were shown where it had been lying, and they had seen a pool of blood at the scene, outside the house, next to the gate.

36. They had then gone to the house of the accused where they were shown some clothes on the drying line, and they had been informed by the accused's wife that the clothes were what the accused had been wearing during the incident, but that he had later washed them at night. The clothes were the shirt, trousers and jacket, and they had retained them as exhibits for further analysis.
37. According to PW10, the information he had received in the course of his investigations was that the accused was a step-son of the deceased. They had built in the same compound.
38. On their return to Chepseon Police Station, the OCS had handed over a panga which had been surrendered by relatives of the accused and which was alleged to be the murder weapon. The panga, which was blood stained, was also retained as an exhibit for further analysis.
39. PW9 had attended a post mortem of the deceased on 31st July 2013 together with some relatives of the deceased at the Kericho District Hospital Mortuary. The post mortem was conducted by Dr. Edwin Kosgei. He had obtained some blood samples from the deceased which, together with all the exhibits obtained from the scene, he had taken to the Nairobi Government Chemist for analysis. PW10 produced the panga as exhibit 8.
40. The last prosecution witness was Dr. Fibian Kosgei, a Medical Officer at the Kericho District Hospital. She gave evidence in respect of the post mortem which had been done by Dr. Edwin Kosgei on 31st July 2013 on the body of the deceased at Kericho District Hospital.
41. According to the post mortem report, the body had a penetrating injury on the front of the chest, and an exit wound on the right posterior chest. There was dried blood from both the mouth and nose. Internally, the body had haemothorax – that is accumulation of blood in the chest cavity with laceration of the right lung. The trachea had also been cut. Both the aorta, pulmonary artery and veins had been cut. The cause of death, according to the post mortem report, was a penetrating injury into the chest which cut the aorta and pulmonary artery resulting in haemothorax. The post mortem report was produced as exhibit 9.
42. In cross-examination, PW11 agreed that the panga produced as exhibit 8 was the weapon that caused the injuries sustained by the deceased. The prosecution then closed its case.
43. Upon considering the evidence before it, the court found that the prosecution had established a prima facie case to warrant placing the accused on his defence. The accused elected to give an unsworn statement and call no witnesses.
44. In his statement, the accused stated that he was 43 years old and a resident of Kimugul village in Chepseon sub-location. He has four children. On the 28th of July 2013, which was a Sunday, he was at home. He had eaten lunch with the deceased at around 1.00 p.m. at his mother's home with his step-father, his mother, his children and his wife. After lunch, the deceased had said he was going to get his charcoal burner some 3 kilometres away. The accused had left his mother's home and gone to his home, about 200 metres away. He had left his mother at home alone. At 7.00 p.m., he and his wife and children had prepared and had supper at their home. They had gone to sleep at 8.00 p.m.
45. At midnight, the accused had heard screams. He had come out to see where the screams were coming from and found that they were coming from about 100 metres past his mother's house. He had returned to his house and dressed and taken his fimbo (rungu, walking stick) as he thought it was drunkards as many people drink on Sundays. He had locked his family inside his house with a padlock for fear of thieves. He had got to the place where the screams were coming from, outside their compound. He had found the Chief and two APS with guns and asked them what had happened and they had shone a torch on the deceased who was on the side of the road. The time was midnight, and it had started raining.
46. The Chief told him to get a polythene paper and a blanket which he brought from His mother's house. The deceased was lying on his left side, bleeding from the nose, and the accused did not see any injuries. He had covered the deceased with the blanket and polythene paper, then had been told by the Chief that it was not good to leave the deceased alone, so he had stayed and borne the rain. The Chief had then told him to go and change his clothes as they were wet. He had gone to his house, changed his clothes found a basin and wrung his clothes. He had then told his wife to wash the clothes, as he would use them the next day, but she had refused and told him to have them washed where he had come from.
47. He had then gone back to where the body of the deceased was. He found that the vehicle had arrived and the body had been taken away. He had then gone back to his house and slept. The following morning, at around 10.00 a.m., the Chief called him and told him to go to Chepseon Police Station. He had gone there with his family. The investigating officer questioned him and he said he did not know anything. A police officer who appeared drunk came and slapped him and said he should be investigated.
48. The accused denied that he wrote a confession, and he stated that it was not true that his mother (PW1) had seen him leaving the scene of the murder. He explained that he was washing his clothes in the night as they were the ones he would wear when required as the first born son. He denied killing the deceased and maintained that they were good friends and had not quarreled.
49. He alleged that those witnesses who had told the court that he had killed the deceased did so because they wanted to sell the land and he had refused. He further stated that his mother and one of his brothers had wanted to sell her land and he had stopped her.
50. In his submissions at the close of the defence case, Mr. Mutai submitted that the state had failed to prove its case against the accused beyond reasonable doubt. His submission was that the evidence of witnesses showed that there were no issues or quarrels between the accused and the deceased. PW1 had stated that the accused and the deceased were on good terms, and on the day of his death, the deceased had invited the accused for lunch.
51. From the evidence of PW2, there was no altercation between the accused and the deceased, both of whom had gone to his assistance after

he found his wife with another man in the bushes. His submission was that the only witness who pointed a finger at the accused as the one who committed the murder was PW1. In his view, her testimony was unbelievable given that she testified that she heard screams and proceeded to where the screams were coming from, had heard someone running towards her and got scared and hid behind a tree, and had seen that it was the accused who was running.

52. She had then stated in cross-examination that she did not shine a light on the accused and that it was God who showed her that it was the accused. Counsel also pointed at the evidence of PW5, who had testified that she had met PW1 and her grandchildren on the road, and that PW1 had told her that her husband the deceased had been killed and that she did not know who had killed him. In Counsel's view, the evidence of PW1 that it was the accused who murdered the deceased was an afterthought. With the exception of PW1, all the witnesses had said that they had no reason to point at the accused as the one who murdered the deceased; there was no motive for the accused to murder the deceased; there was no eye witness who actually saw the accused kill the deceased; and there is no direct evidence that links the accused to the murder. Mr. Mutai urged the court to find the accused not guilty of the murder and release him.

53. I have considered the prosecution evidence on record, and the submissions of Counsel for the accused. Section 203 of the Penal Code provides that ***"Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder."***

54. Section 206 defines ***"malice aforethought,"*** so far as is relevant for this case, as follows:

Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;

(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

55. The law casts a burden on the prosecution to prove three things in order to sustain a charge of murder against an accused person. It must first prove the death and cause of the death of the deceased. Secondly, it must prove that the accused person(s) committed the unlawful act that led to the death of the deceased. Finally, the prosecution must prove that the accused person(s) caused the death of the deceased with malice aforethought as defined in section 206 of the Penal Code.

56. There is no dispute about the death or the cause of death of the deceased. He was stabbed in his cattle boma (shed) on the night of 28th July 2013. The cause of death, according to the post mortem report presented by Dr. Fibian Kosgei, was a penetrating injury to the chest which cut the aorta and pulmonary artery resulting in haemothorax.

57. The deceased had been attacked so savagely that, as the post mortem report indicated, he had a penetrating injury on the front of the chest, and an exit wound on the right posterior chest. There was an accumulation of blood in the chest cavity or haemothorax, with laceration of the right lung. His trachea had been cut, as had his aorta, pulmonary artery and veins. Whoever inflicted these injuries on the deceased clearly did not intend that he should survive. He intended to kill him. He therefore caused the death of the deceased with malice aforethought, and his acts amounted to murder as defined in section 203 of the Penal Code.

58. The prosecution charges the accused with committing this heinous offence against a man who, from the evidence, was his step-father and who had brought him up since he was 7 years old. The prosecution must prove its case against the accused beyond reasonable doubt.

59. As submitted by Mr. Mutai for the accused, there was no eye witness evidence that it was the deceased who attacked and murdered the deceased. What we have is circumstantial evidence, a dying declaration by the deceased which was heard by his wife, the mother of the accused, and the accused's statement under inquiry.

60. Annah Chemutai Cheri (PW1), the accused's mother, was with the deceased at home on the material night. The deceased had gone to tether a calf. She had then heard screams from her son, Nelson (PW2), and the deceased had taken a panga and ran towards the screams. She had shortly thereafter heard the deceased screaming that the accused had killed him. PW1 had run towards the screams, and on the way, she met the accused running back. She had hidden behind a tree till he passed as he had a panga.

61. She then went to where the deceased was and found him lying on his back with blood on his chest. She had identified the panga that the accused had on the material day, which had been found by Winnie Cherotich (PW5) on the path on the night of the murder. She stated in cross-examination that she had hidden when she saw the accused running with a panga in his hand. When she reached the deceased, she had heard him say "Wesley", and she maintained in re-examination that the deceased had cried saying *"Wesley has killed me."*

62. PW2, Nelson Chepkwony, who is the accused's brother, confirmed the evidence of PW1 that the deceased had left his house to go and assist him when he screamed. PW2 had then escorted his wife home, and left the accused and the deceased. In cross-examination, he stated that the deceased had left first. He denied seeing the panga that the accused had.

63. The Assistant Chief, PW3, testified that he had met PW2, who had told him that the accused had hit the deceased with a piece of timber. PW3 testified to there being bad blood between the accused and the deceased.

64. PW8, Senior Superintendent Justus Burudi, had recorded a statement under inquiry from the accused. This was after the accused had confessed to PW9 that he had killed his step-father. As PW9 was not qualified to take a confession, she had not recorded his statement but

had called on PW1 to do so. His statement is recorded in Kiswahili in the presence of his brother, PW2, Nelson Chepkwony, and signed by the accused. In the statement, he confesses that he 'hit' his step-father with a panga in the chest but that he did not intend to kill him and that the killing was accidental. He also alleges in the statement that his step father had thrown a jembe and panga at him, and that he had hit the accused in the face with cow dung.

65. I have also noted the evidence of the investigating officer. She testified that on questioning the wife of the accused after the incident, she had stated that the accused had gone home later the night of the murder and had washed his clothes. His wife had found this unusual as she is the one who washes clothes.

66. Taken together, the evidence adduced by the prosecution leads to only one conclusion: that it was the accused who, with malice aforethought, caused the death of his step-father, the deceased. The person who was the first to testify against him was his mother, and her evidence, though somewhat confused in some respects, and understandably so in my view, irresistibly points to the accused as the perpetrator of the offence. He washed his clothes after the incident, at night, something he ordinarily would not do. And he confessed, in his very long statement, to having killed the deceased. One gets the impression, from the statement which contains allegation of witch craft against the deceased and suggestions by the accused that the deceased attacked him first, that there was very bad blood between the accused and his step-father, which culminated in the murder.

67. I have considered the accused's unsworn statement in his defence. I note that he alleges that he only learnt of the death of the deceased at around midnight when he heard screams from near his mother's house. He has tried to explain why he washed his clothes at night, and he alleges bad blood between his mother and brother because he stopped his mother from selling land. Given the strong prosecution evidence, including the statement of his own mother and his statement on inquiry, it is my finding that the accused did, with malice aforethought, cause the death of the deceased. I therefore convict him of the offence of murder contrary to section 203 as read with section 204 of the Penal Code in accordance with section 215 of the Criminal Procedure Code.

Dated Delivered and Signed at Kericho this 27th day of June 2018

MUMBI NGUGI

JUDGE