REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO. 38 OF 2015

REPUBLIC…….....……PROSECUTOR

Versus

G M M…...…….....…….....ACCUSED

JUDGEMENT

G M M hereinafter referred as the accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code (Cap 63 of the Laws of Kenya). The particulars of the charge under the penal code are that the accused on 30th day of July 2015 at [Particulars withheld] area in Ongata Rongai township within Kajiado County murdered V G, a minor aged one and half years (1½ years old) as at the time of his death. The accused pleaded not guilty to the charge necessitating a trial be held to proof the elements of the charge of murder beyond reasonable doubt against the accused. The accused was represented at the trial by Mr. Ochieng advocate while the prosecution was conducted by Mr. Alex Akula, a senior prosecution counsel.

In support of its allegations that the accused was engaged in killing the deceased, the prosecution adduced evidence from nine (9) witnesses. According to the prosecution witness PW5 – R N the incident that culminated in the death of the deceased referred as V G revolved around the following circumstances. PW5 testified before this court that she had been in a come we stay relationship with the accused person. During the subsistence of the relationship there was consummation where PW5 conceived and baby V G was born. It is on record that the relationship did not last for long culminating in the two parting ways leaving the baby V G in the custody of PW5 with limited right of access by the accused. PW5 further testified that since she was working mother the deceased was left in the care of PW6 Grace Wanjiru during the day until she returns back from work in the afternoon. According to the testimony of PW5 on the fateful day of 30/7/2015 she took the deceased to PW6 and proceeded to work as usual. According to PW5 on or about 1.00 pm she received a telephone call from PW6 that the accused went to her home, picked the deceased with a promise to return back in a little while. PW5 further stated that on receipt of the information that the accused picked up the deceased but they are yet to return back to the home of PW6. According to PW5 suspicion and anxious led her to seek permission to go home and verify the safety of her child V G the deceased. The first point of call according to PW5 was at the house of the accused. When she arrived the house was locked from the inside but could see through the window that the accused and the deceased were inside. What was worrying to PW5 was the fact that nobody was responding to the knocks at the door despite noticing their presence in the house. According to PW5 she sought help from a welder in town PW4 Antony Caris Wamboye to assist in grinding the door to gain access to the house. PW4 confirmed that he was hired by PW5 to proceed to [Particulars withheld] area and cause the door to be welded in order to gain entry by PW5. The testimony by PW4 and PW5 confirms that the welding was successful and on entry they were confronted with a foul smell. The deceased and accused were both in bed. The accused was sweating profusely while the body of the deceased was motionless and cold. It was further the testimony of PW4 and PW5 that in the house was a basin with

some whitish substance. As PW4 left the scene PW5 made arrangements to take the deceased to Nairobi Women Hospital – Ongata Rongai Branch and at the same time made a report to the police. This simultaneous action prompted police action to investigate the matter.

PW6 Grace Wanjiru corroborated the testimony of PW5 that V G, the deceased was dropped in her house in the morning of 30/7/2015 to take care as PW5 proceeded to school where she works as a teacher. It was further the evidence of PW6 that on or about 1.00 pm the accused who was known to her as the father of V G (the deceased) came and made a request to go out with V G. deceased to town centre. According to PW6 the request made by the accused to go out with the deceased was to take a short while but it ended lasting for hours. This caused suspicion to PW6 who told this court that she decided to telephone PW5 that the deceased V G was taken away by the accused but they have rather taken long than agreed during the pickup. The telephone call was therefore to alert PW5 about the situation at home regarding the absence of her child V G the deceased.

PW7 Alphaxad Mwaura testified that on 30/7/2015 while working at Mt. Sinai Hospital he examined and treated the accused person who was brought in with a history of being semi-conscious but stable condition. PW7 further deposed that on examination it was confirmed that the accused had administered self poison to himself which occasioned the symptoms he was displaying. The admission and discharge summary about the accused treatment admitted in evidence as exhibit 4 (a) (b) (c).

PW8 Dr. Johansen Oduor Chief Pathologist testified as to examination and postmortem dated 3/8/2015. PW8 stated that in view of the nature of the case he extracted blood, liver, kidney and stomach contents for toxicology purposes at the government chemist. The analysis was conducted by PW2 Stephen Matinde who identified the samples as particularized at the laboratory. According to PW2 the examination of the exhibits undertaken on 7/1/2016 revealed presence of diazinon; an organo phosphorous pesticide in the stomach content sample of the deceased. PW2 affirmed in evidence that diazinon is a toxic substance which is harmful to humans if ingested. The government analyst report was produced as exhibit 2. According to the prosecution witness PW1 Dr. Edgar Munga a mental fitness examination was conducted on the person of the accused. In his finding PW1 confirmed that the accused did not have a testimony of mental illness; and was therefore well oriented and fit to stand trial and conduct his defence.

PW9 Cpl Moses Mwenda the investigating officer stated that he received instructions to handle the murder case involving the deceased whose body was at Nairobi Women Hospital. PW9 disclosed that he visited the scene, took some photographs and also managed to travel to both hospitals where the deceased body had been preserved and also where the accused was admitted to undergo treatment. PW9 further confirmed to this court that some exhibits being a whitish substance was recovered at the scene in a house located at Kandisi. This substance and the other exhibits from the body of the deceased were subjected to toxicology analysis by PW2. PW9 further stated that on receipt of the analyst report he recommended that accused be charged with the offence regarding the death of his son. That was the defence made in answer to the offence against the accused.

At the close of the prosecution case the accused elected to give a sworn statement and called three witnesses to support his answer to the offence. In his sworn statement the accused admitted that in the year 2013 they became friends with PW5 – R N. According to the accused both of them stayed in one house which culminated in the deceased being born during the subsistence of the so called marriage. I say so because it is not clear from the evidence whether there was availed marriage or boyfriend/girlfriend relationship gave rise to the birth of the minor V G herein referred as the deceased. The accused however alluded to incident where the relationship became frost as a consequence he parted ways with PW5 but maintained physical access to the deceased. It is further the accused testimony that on the material day 30/7/2015 through under grave stress he picked the deceased from PW6 house. They both proceeded to his house. The accused further testified that in the course of the day he spent some time taking a lot of beers to calm down the emotional stress he was going through. The accused further told this court that it reached a point he would not bear the stress and the best option at hand for him was to prepare the pesticide in the house which he will drink to bring his life to an end. It is that poison according to the accused which the deceased accidentally sipped resulting in his death. The accused further laid evidence

that he was unable to reach his mobile phone in order to call PW5. The accused further stated that the efforts to administer first aid to save the deceased failed to bear any fruits. The accused denied that he murdered the deceased by preparing poison and administering the same on him as stated by the prosecution witnesses.

The evidence of DW1, DW2, DW3 and DW4 involved the mother, father, friend and brother to the accused respectively. Their testimonies before this court centred on the testimony of early childhood upto adult life of the accused person. In the evidence of DW1, DW2, DW3 and DW4 the accused was well known to them and they never experienced any negative character disposition. What came out from DW1, DW2, DW3 and DW4 was the accused character and behaviour of being temperamental and withdrawn in certain situations in his childhood and adult life. The witnesses for the accused were categoric that they were shocked to hear that the accused has been convicted with the dead of their child.

The evidence of the prosecution witnesses has been examined together with the case for the defence in answer to the charge. On the outset i wish to state that the accused person faces a serious offence of murder contrary to section 203 of the Penal Code. A person charged under this section if found guilty and convicted has to be sentenced to death. The question therefore for this court to answer is what are the elements that constitute an offence under section 203 of the Penal Code.

1. That the deceased V G is dead

2. That the deceased V G died as a result of unlawful act of commission/or omission on the part of the accused.

3. That the accused in killing the deceased VG did so with malice aforethought.

4. Finally the accused before court was positively identified and placed on the scene as the one who caused the death of the deceased V G.

The state through the prosecution must prove beyond reasonable doubt every element of a charged offence against the accused. See ***Woolmington v DPP [1935] AC 462.*** The standard of proof in criminal cases of beyond reasonable doubt is as elucidated by none other than Lord Denning in the case of ***Miller v Minister of Pensions [1947] 2ALLER 372 at 373*** in the following passage:

> **"That degree is well settled. It needs not reach certainly, but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice."**

The standard of proof of beyond reasonable doubt is so fundamental in our criminal justice because of the constitutional imperative that each accused person is presumed innocent until the contrary is proved. ***(See Article 50 (2) (a) of the Constitution)***. The constitutional mandate for the reasonable doubt standard was well anchored in the provisions under Article 50 on the right to a fair trial which provide for sufficient information on the charge, to have adequate time and facilities to prepare a defence, public trial, expeditious trial, legal representation, to be informed in advance of the evidence the prosecution intends to rely on and have reasonable access, to adduce and challenge evidence and every evidence obtained in a manner that violates any right or fundamental freedom shall be excluded if the admission would render the trial unfair or would be detriment to the administration of justice. The ***Federal Judicial Center, Pattern Criminal Jury Instructions [1988]*** had this to say on the principle:

> **"Proof beyond reasonable doubt is proof that leaves you firmly convinced of the defendant's guilty. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based**

on your consideration of the evidence, you are firmly convinced that the defendant's is guilty of the crime charged, you must find him guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty."

What these principles affirm is our jurisdiction provisions under section 107 (1) (2) of the Evidence Act Cap 80 of the Laws of Kenya. The prosecution has the burden to proof beyond reasonable doubt any allegations against the accused to obtain judgement in their favour.

It is therefore necessary at this stage to analyse and evaluate the evidence to make a finding whether the prosecution has discharged the burden on each ingredient.

1. The death of the deceased:

Proof of death is usually proved by medical evidence. In ***Munyele v Republic [2010] 2EA 315***:

"The burden of proof of cause of death lies with the prosecution and the defence never shoulders the burden of disapproving the cause of death, his duty to is only to raise reasonable doubt."

However it should be noted that the absence of medical evidence or postmortem is not normally fatal to the prosecution case on the cause of death. See the case of ***Benson Ngunyi Mundu v Republic Nairobi Court of Appeal Cr. Appeal No. 171 of 1984***. Under this element PW5 – R N mother to the deceased identified the body to the pathologist. This was corroborated by PW6 Grace Wanjiru. The pathologist Dr. Johansen Oduor conducted the postmortem and proceeded to recommend for toxicology in absence of any physical injuries on the deceased. The toxicology according to PW8 involved the kidneys, blood, the liver and stomach contents. The toxicology was conducted by PW2 Stephen Matinde, a government analyst. In his report PW2 confirmed that on examination of the whilst samples and contents of the stomach of the decease there was presence of a pesticide know as diazinon. The substance according to PW2 is harmful to human beings if ingested. Besides the postmortem evidence, Mr. Ochieng counsel for the accused did submit that death is not disputed. The accused and father of the deceased in his sworn statement of defence confirmed the death of the deceased. The inference i draw from the prosecution and the defence on this ingredient is that there is no contestation – V G a minor aged 1 ½ years died on 30/7/2015. The burden of proof cast upon the prosecution has been discharged beyond reasonable doubt.

2. The second element of the offence under section 203 is that of the death being unlawful:

The classic case of **Guzambizi S/O Wesonga v Republic [1948] 15 EACA 65**:

"Every homicide is presumed to be unlawful except where circumstances make it excusable or it 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."

The law in the case of ***Ilapala S/O Ibrahim v Republic [1953] 20 EACA 300*** the court held that:

"The killing of another is justifiable where an accused person acts without vindictive feeling and reasonable belief that a person's life is in imminent danger and that his action is absolutely danger is that of a person related to the accused or of a stranger."

See also ***Criminal Law at pg 128 by William Musyoka J***.

In the case of ***Muthiga v Republic [1987] KLR 134*** the court held that asserting ones right of ownership and possession of some property against a trespasser amounts to a defence to property. ***Criminal Law (Supra).*** All other circumstances involving homicidal are considered unlawful.

As regards evidence on this element Mr. Ochieng the learned counsel for the accused submitted that the

death of the deceased was not due to unlawful act on the part of the accused. Learned counsel referred the court to the evidence of the accused that during the period under review he was undergoing mental stress which led him to partaking of alcohol in great proportions. According to learned counsel there is no evidence that the accused administered poison on the person (the deceased). It was further learned counsel contention that the poison was meant to be taken by the accused so as to facilitate his own death. According to learned counsel the only omission on the part of the accused is his failure not to ensure that the deceased does not access the pesticide solution. The learned counsel submitted that there is no evidence from either PW5 or PW6 to establish any unlawful acts by the accused person.

In this case the deceased a young child of tender age of 1½ years was alive in the morning of 30/7/2015. He was dropped in the house of PW6. The deceased and the accused left together on or about 1.00 pm. The deceased was later discovered dead in the house of the accused at Kandisi. The cause of death according to PW8 as confirmed by PW2 was due to ingesting diazinon pesticide a toxic substance harmful to the health of a human being. The death of the deceased was not due to natural causes nor any of the exceptions created by law on self defence or in defence of property. The diazinon pesticide was recovered from the scene of the murder. This was not normally the resident or fixed abode of the deceased. The accused and his alleged wife PW5 had parted ways with retention of custody rights remaining with the mother PW5. The accused picked the deceased from the house of PW6 without the knowledge and consent of the mother PW5. It emerged from the testimony of PW5 and the accused person that their relationship was no longer cordial. There were reports made to the police and the area chief regarding the continued family conflict between them. This visit and taking away the child from PW6 house cannot be described as a normal incident where both accused never enjoyed any closeness or had any meaningful conversation since parting way.

The act of purchase of pesticide, preparing it and dispensing it on the minor V G who was at a tender age had no capacity to choose between right or wrong is unlawful act. It is also unlawful act to place a dangerous weapon or poisonous substance within close proximity to a child of the age of V G the deceased. The accused an adult of sound mind could have known that a mere sip of a poisonous substance by the deceased will occasion grievious harm or death. That was foreseeable in the circumstances of this case.

I am therefore satisfied that in this set of circumstances the death of the deceased was not lawful. This second ingredient has been proved beyond reasonable doubt.

3. The critical element which distinguishes murder from other homicides is that of malice aforethought:

The ***mens rea*** for the offence of murder is one referred to as malice aforethought. The importance of malice aforethought under section 203 of the Penal Code is so critical that if the prosecution fails to establish this ingredient the offence is not proved beyond reasonable doubt. Under section 206 of the Penal Code the element of malice aforethought can be established from direct or circumstantial evidence to show:

a. An intention to cause the death of another.

b. An intention to cause grievious harm to another.

c. Knowledge that the act or omission causing death will probably cause death or grievious harm to some person whether that person is the person killed or not, accompanied by indifference whether death or grievious injury occurs or not or by a wish that it may not be caused.

d. An intent to commit a felony.

In a series of cases courts have interpreted section 206 of the Penal Code to give effect the circumstances malice aforethought can be inferred. In the case of ***Tubere S/O Ochen v Republic [1945] 12 EACA 63*** the

court held that it is the duty of the court in determining whether malice aforethought has been established to consider the weapon used, the manner in which it is used, the part of the body targeted and the conduct of the accused before, during and after the attack. In ***Republic v Enock Achila & Another [1941] EACA 63*** the act of causing death will be considered intentional if the accused foresaw the consequences of his action. The Court of Appeal for Eastern African in the case of ***Paulo S/O Mabula v Republic [1953] 20 EACA 207*** held interalia that it would be murder where a person seeking to commit suicide kills another person accidentally. The court stated that this is so because suicide is a felony at criminal law and that by virtue of section 206 (a) of the Penal Code any person includes the person intending to kill himself. ***See also Criminal Law by William Musyoka J at pg 314 paragraph 2.***

The other circumstances which can be inferred to give rise to malice aforethought will be in the manner of killing by the accused. The Court of Appeal in the case of ***Abanga alias Onyango v Republic Cr. Appeal No. 32 of 1990*** held interalia that where the brutal killing was well calculated and planned by the appellant to conclude that he had an intention to kill the deceased the offence will be murder. In the recent case of ***Bernard Kungu Kariuki v Republic Cr. Appeal No. 362 of 2012 eKLR*** where the court considered that the deceased had died due to administering of poison as confirmed from the toxicology by the government chemist malice aforethought was deemed to be present on the part of the appellant.

What inference do I draw under this ingredient while applying the above legal principles in the authorities cited. This is a case where PW5 dropped her son the deceased in the house of PW6 to care for the child on her behalf until she returns in the evening from work. It also emerged that the accused and PW5 confirm that the deceased was born while together as husband and wife, boyfriend/girlfriend relationship which matured into marriage by presumption. Their marriage or friendship did not last long and they did part ways with PW5 remaining with the custody of the deceased. There is ample evidence that on 30/7/2015 the accused without consent or information from PW5 picked the deceased from the day care home of PW6. PW6 confirmed to this court that the accused promised to return the child after ten minutes. The accused never brought back the deceased. When PW5 got information from PW6 she rushed to the accused house and found the two of them in the house. PW5 confirmed the house was locked from the inside. PW5 had to use a welder PW4 to forcibly open the door. On entry PW5 found the deceased lifeless while the accused was breathing and sweating profusely. When PW5 rushed the deceased to Nairobi Women Hospital he was confirmed dead. It is not disputed that the accused drunk a concoction of diazinon – positively identified as a harmful pesticide by PW2 the government chemist who conducted toxicology analysis. The whitish substance which the accused drunk together with the deceased was in the accused house. The pesticide is usually in powder form but for it to be ingested some preparation has to take place. The deceased was aged about 1½ years and would not have prepared the pesticide voluntarily and drunk it without the aid of an adult member. The accused in answer to the charge admitted that the pesticide is meant to kill cockroaches but his choice to drink it was to terminate his life through suicide. This diazinon pesticide is a deadly poison because it is not meant for human consumption. It is not in dispute that the accused was the one who purchased the pesticide and was stored in his house. The accused it has been confirmed that he picked the deceased on or about 1.00 pm when he was in good health. The next time PW5 and PW6 came into contact with the deceased his life had been prematurely terminated through ingestion of poisonous substance.

Through poisoning the motive on the part of the accused can be inferred from the irreconcilable differences he had with his former wife PW5 and the mother of the deceased. This action of killing the deceased was a mission of revenge not only to deny the deceased the act of living but to permanently traumatize and injure the heart feelings of PW5. I am therefore satisfied that the accused had a plan to kill the deceased. He executed it by purchasing the harmful pesticide. He went for the deceased at the day care home and picked him without the knowledge of the mother PW5. The accused took him to his house and locked it from inside. The accused drunk the same poison but did not manage to die but as for the deceased he succumbed to death. The accused never made any attempts to take the deceased to the hospital.

The appraisal of the evidence of PW4, PW5, PW6 and PW9 revealed no evidence that the accused tried to rescitate the deceased in any way to save his life. The locking of the house door is a clear manifestation that accused intended the scene to be inaccessible save for picking the dead bodies of the two of them. I

therefore do not agree with the defence testimony and witnesses that the accused had no malice aforethought to kill the deceased. There is overwhelming evidence by the prosecution to establish malice aforethought on the part of the accused person. The accused person killed the deceased person V.G with premeditation. This is where evidence is sufficient as to the accused concerning the design or plan to kill the deceased. The accused in his defence raised a defence of intoxication under section 13 of the Penal Code which provides as follows:

> **"Save as provided in this section, intoxication shall not constitute a defence to any criminal charge. Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission if and not known that such act or omission was wrong or did not know what he was doing and:**
>
> **a. The state of intoxication was caused without his consent by the malicious or negligent act of another person; or**
>
> **b. The person charged was by reason of intoxication insane, temporarily or otherwise at the time of such act or omission.**
>
> **c. Where the defence under subsection 2 is established, in a case falling under paragraph (a) thereof the accused shall be discharged and in the case falling under paragraph (b) the provision of this code and of the Criminal Procedure Code relating to insanity shall apply.**
>
> **d. Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise in the absence of which he would not be guilty of the offence.**
>
> **e. For the purpose of this section intoxication includes a state produced by narcotics or drugs."**

Lord Denning in the Case of ***Attorney General for N. Ireland v Gallagher [1963] AC 349*** set out the guidelines laid down in this persuasive authority by the English Courts on the defence of intoxication in the following manner:

> **"If a man, whilst sane and sober, forms an intention to kill and makes preparation for it knowing it is a wrong thing to do, and then gets himself drink so as to give himself Dutch courage to do the killing, and whilst drunk carries out his intention, he cannot on his self induced drunkenness as a defence to a charge of murder not even as reducing it to manslaughter. He cannot say that he got himself into such a stupid state that he was incapable of intent to kill. So also when he is a psychopath, he cannot by drinking rely on his self-induced defect of reason as a defence of insanity. The wickedness of his mind before he got drunk is enough to condemn him, coupled with the all which he intended to do and did do."**

The Court of Appeal applying the above principles and the provisions of section 13 (1) of the Penal Code in the case of ***Kupele Ole Kitanga v Republic [2009] eKLR Cr. No. 26 of 2007*** stated as follows:

> **"A clear message must also go out to those of the appellants who deliberately induce drunkenness as a cover up for criminal acts unless a plea of intoxication accords with the provisions of section 13 of the Penal Code it will not avail an accused and does not avail the appellants in this particular case."**

In respect to this defence I have evaluated the entire evidence but only to come to the conclusion that the deceased death did not occur at the spur of the moment. The evidence shows that the drinking being alluded to by the accused was only meant to assist him gather the Dutch courage to kill not only the deceased but also himself. The case for this accused does not fall within the exceptions contemplated under section 13 of the Penal Code. The prosecution have offered a candid and cogent evidence on how

the deceased met his death. The defence of intoxication is therefore not available to the accused.

From the evidence the circumstantial evidence of PW6 together with the direct evidence of PW4 and PW5 who broke into the house and the scene of the murder positively places the accused at the scene. I have considered the facts and circumstantial evidence and do agree with the legal proposition by the Court of Appeal in ***Abanga alias Onyango v Republic (Supra)*** which held as follows:

> **"It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests:**
>
> > **i. The circumstances from which an inference of guilty is sought to be drawn and firmly established.**
> >
> > **ii. Those circumstances should be of a definite tendency erringly pointing towards guilt of the accused.**
> >
> > **iii. The circumstances taken umulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed and none else."**

In the facts of this case there is circumstantial evidence from PW2 that he analysed the samples whitish substances of diazinon pesticide. The stomach sample of the deceased was analysed by PW8 and found to have ingestion of poisonous pesticide. PW3 the scenes of crime officer testified that he visited the scene and collected a plastic bottle which had the pesticide substance. It is the same substance which PW2 confirmed was found present the stomach content of the deceased. According to PW5 who was the first person to visit the scene together with PW4 noticed the whitish substance in a basin. According to PW5 there was a strong foul smell within the room where they (the deceased and accused) were found. PW6 confirmed that the accused was the last person to pick the deceased from her house. The testimony of PW6 confirmed that the deceased was in good health at the time the accused came for him under the disguise that was for a little while before he returns him back to PW6 house. The identification of each individual fact along the chain of events since the time the accused picked the deceased from PW6 on the material day provides an indisputable link in a chain that the death of the deceased was caused by none other than the accused.

To bring home the guilt of the accused person the prosecution adduced the thread of evidence placing the accused under the last seen theory as applicable in the instant case. There is no dispute nor contradictions in any of the prosecution witnesses as to the date and time accused left with the deceased from PW6 house. The next time the deceased was discovered in the company of the accused he was motionless having succumbed to death due to the poison administered by none other than the accused. According to the answer to this issue the accused pleaded 'accident' occurrence in so far the taking is concerned involving the deceased. The testimony of PW4 and PW5 as the first witnesses to arrive at the scene discounts the defence of accident.

On my part I have had the advantage of seeing and hearing witnesses who gave evidence in support of the prosecution case. I was impressed with the cogently, consistent of their respective testimonies. The defence counsel subject each one of them to a vigorous cross-examination with a view to sway their version of evidence however they stood firm as to the events of the day before this court as what actually transpired leading to the death of the deceased. What the prosecution proved from both direct and circumstantial evidence are facts consistent only with the hypothesis of the guilt of the accused totally inconsistent with his defence.

Guided by the evidence, the authorities herein cited above I am satisfied that the prosecution has discharged the burden of proof of beyond reasonable doubt under section 203 of the Penal Code. I find the accused guilty of the charge of murder and do hereby convict him accordingly. The sentence to be imposed is provided for under section 204 of the Penal Code for the offence of murder.

Dated, delivered in open court at Kajiado on 27th day of February, 2017.

R. NYAKUNDI

JUDGE

Representation:

Accused - present

Mr. Akula Senior Prosecution Counsel – present

Mr. Nyaata for the accused - present

Mr. Mateli Court Assistant - present