



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
CRIMINAL CASE (MURDER) NO. 22 OF 2016

REPUBLIC.....PROSECUTOR

-VERSUS-

P N N.....SUBJECT

J U D G M E N T

1. **P N N**, a juvenile is charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. The information states that on the 5th day of July, 2016 at [particulars withheld] area within Nyandarua County, he murdered **N W**. He denied the charge and was represented by Mr. Mburu. The prosecution called thirteen witnesses.

2. The case presented against the Subject was as follows. The Subject and the deceased minor (**N W**) were residents of [particulars withheld], Magumu and were neighbors. Both were aged about 13 years. Early on the night of 5th July, 2016 **N M (PW1)** a resident of [particulars withheld] was walking along a village path heading to the local shops. Ahead of him was **J W J, (PW3)** a local pastor who was also walking on the path. **PW3** discerned the voice of a person in distress. Turning around he persuaded **PW1** to accompany him to establish the source of the cries.

3. A few metres of retracing their steps led them to the oats farm that belongs to a villager **S M K (PW8)** that lay next to the path. There, the duo found the deceased bent over while on her knees. She had an injury to her head and half dressed. The men raised an alarm. The victim said that "**P**" had stabbed her as villagers came to the scene.

4. As **PW1** and **PW3** tried to make arrangements to inform the mother of the deceased and to seek help for the deceased, the Subject appeared at the door of the deceased's aunt, **E W K (PW7)**. He appeared in a panic and reported to **PW7** that while he and the deceased were walking from the shops, a man appeared and stabbed the deceased.

5. With other neighbours, including her sister **J N N (PW4)**, **PW7** followed the Subject to the scene of attack. The victim was not there having already been taken to the local dispensary by good Samaritans (**PW1** and **PW3**). **PW4** and **PW7**, with others proceeded to the dispensary with the Subject. There the Subject was further interviewed by **PW1** and **PW3**. He narrated that he and deceased had gone to the shops earlier in the evening. That having purchased some sweets, they started off for home. That on the way, the deceased suggested that they have sex. That they went into the oat farm for that purpose. That presently, a strange man appeared and violated and stabbed the deceased as the Subject managed to escape.

6. The Subject was escorted from the dispensary to the police station at this point, as the deceased was

moved to Naivasha District Hospital. **S W N (PW5)** and **R I K (PW6)** (husband to **PW7**) drove the victim to Naivasha District Hospital. The victim repeated to them the assertion that the Subject had stabbed her. A few hours later, the victim succumbed to her injuries.

7. On the next day, police visited the scene and took photographs. They also recovered a pair of “Toughee” shoes (**Exhibit 3**) and a blood stained knife (**Exhibit 4**) both which the Subject’s mother, **M N R (PW2)** identified as belonging to her son and household.

8. The analysis conducted by **Henry Kiptoo Sang (PW10)** on the blood sample of the deceased showed that the DNA profile matched with the DNA profile generated from the stains on the knife. On 12/7/2016, **Dr. Ngulungu (PW13)** conducted the post mortem examination on the body of the deceased. He concluded that the cause of death was blood loss resulting from sharp and blunt trauma to the chest. The Subject was arraigned in court on 15th July, 2016.

9. When the Subject was placed on his defence, he elected to make a sworn statement. In light of his age, the court conducted the requisite *voir dire* examination, at the conclusion of which directions were made that he was competent to give sworn evidence.

10. He stated that he and the deceased were pupils at [particulars withheld] School and neighbours at [particulars withheld]. He said that on the fateful day while on his way to the shops at 6.00pm he passed via the plot where the deceased resided, seeking the deceased’s brother. He found the deceased who said her brother was not home. He left the home and proceeded to the shop close to the gate of the deceased’s home. The deceased however trailed him to the shop. He decided to use a different route home. The said route passes by **PW8’s** shamba, but the deceased followed him still, and when he questioned her behavior, the deceased did not respond.

11. Suddenly, a man appeared. He was wielding a knife. He ordered both the Subject and deceased to follow him inside **PW8’s** farm, on pain of death. They came to a cleared patch in the oatmeal plantation. There the said man forced the deceased to lie down, and the Subject to take off his trousers. That as the Subject did so, his knife (**Exhibit 4**) fell out. The man had given him his knife and ordered him to stab the deceased, but on seeing his fallen knife, he ordered him to use it on her.

12. Presently, the said man took the Subject’s knife and stabbed the deceased while holding the Subject’s throat. The Subject however slipped off and escaped, discarding his shoes (**Exhibit 3**) as he fled. The Subject went directly to **PW7’s** home and reported what had transpired. She sent him to seek help at her relative’s home. He complied and then returned with them to **PW7’s** home.

13. Villagers streamed into the home and soon demanded that the Subject leads them to the scene of attack. He did so. They saw blood and then headed for the dispensary. On arrival there, some persons gathered demanded to know who “**P or P**” was. He owned up and was taken to the police station. He did not attend the scene visit on the next day when his knife and shoes were recovered. He denied having lured the deceased from her home to the oat farm for the purpose of having sex with her or stabbing her for rebuffing his advances.

14. There is no dispute that the Subject and deceased minor were known to each other. They were residents of the same village and attended the same primary school. Both were roughly 13 years old. Further it is common ground that on the material date, the Subject went to the home of the deceased minor and left. He left with the minor and was in the company of the deceased minor for some time. The Subject carried on his person a knife identified as **Exhibit 4**.

15. It is not in dispute that the said knife was used to stab the deceased and was recovered at the scene on the next day. That at about 7.30pm of the material date the Subject went to the home of the deceased’s aunt **PW7** and reported that a man had stabbed the deceased. That he led villagers, including **PW7** to a scene inside **PW8’s** oats field where the attack by the alleged male stranger occurred. The scene had a lot of blood. It is not disputed that the deceased minor sustained several stab wounds, and to which she succumbed on the material night while undergoing treatment. Finally, it is not in dispute that on the

material date the Subject appeared at **PW7**'s door between 7.00pm and 7.30pm and reported that while he and the deceased were together a man appeared and stabbed the deceased.

16. The court must determine whether, of malice aforethought the Subject inflicted the fatal injuries on the deceased. The prosecution case was based on circumstantial and direct evidence, the latter being in the form of the reported dying declaration of the deceased to several witnesses.

17. Regarding the latter, the first witnesses on the scene of crime, namely, **PW1** and **PW3** stated that the deceased told them that "**P**" the local diminutive of the name **P** by which the Subject was known, had stabbed her.

18. This is what **PW1** stated in his evidence-in-chief:-

"We left path and entered shamba. The other man (PW3) had a Phone. We found a girl kneeling and half naked. The trouser was pulled down. She had a bleeding wound on the side of the head. She was kneeling over and screaming:

"Please help! Patrick has stabbed me with knife."

I did not know who Patrick was.....on material night, girl mentioned "P" but I did not know which Patrick it was. He (Subject) was brought to the hospital by a group of people."

PW1 further stated that at that moment he realized he knew the subject as a local.

19. **PW3** told the court that his phone had a strong torch light and that when he and **PW1** entered the oats farm, they found the deceased lying face down with head injury. That she gave her name as "**NW**" and her mother's name as "**W**", and proceeded to state that **Patrick** had stabbed her. Further, that the Subject later told him that he and the deceased had agreed to have sex after buying sweets and then the strange man appeared. Ditto **PW4**. **PW3** also stated during cross-examination that:-

"The girl said she was stabbed by "P" The girl's trouser and her underwear had been pulled out (down). She was exposed."

20. Two of the persons who escorted the deceased to Naivasha District Hospital from [particulars withheld] were **PW5** and **PW6**. Both of them testified that the deceased repeated her declaration to them, more than once, that it was "**P**" or "**P**", the Subject who had stabbed her.

21. So, what weight is to be attached to the deceased's dying declaration? In the Case of **Chengo Nickson Kalama –Vs- Republic [2015] eKLR** the Court of Appeal observed in this connection that:

"Of course, a dying declaration is receivable in evidence in terms of Section 33(a) of the Evidence Act. However, before such evidence can be received and acted upon, certain conditions must be met; the person who made the declaration must be dead, the trial must be for the person's death, the statement must relate to the cause of death, the person must be a competent witness and there must be circumstances which goes to show that the deceased could not have been mistaken in his identification of the accused. See Pius Jasanga s/o Akumu v R [1964] 21 E.A. 331 and Choge v Republic [1985] KLR 1. Word of caution though, it is generally unsafe to base a conviction solely on such evidence unless there is satisfactory corroboration. It is not a requirement of law but a practice to obviate the inherent dangers."

22. Mr. Mburu for the Subject has also urged caution in dealing with the dying declaration, which in this case was that of a minor. He has cited Section 124 of the Evidence Act regarding the need for corroboration of the evidence of a minor and Section 125 of the Evidence Act on the competency of witnesses, in this case, children of tender years. Thus in this case, corroboration is required by practice and by law.

23. In its decision in **Maripett Loonkomok -Vs- Republic [2016] eKLR** the Court of Appeal commented on the import of Section 124 of the Evidence Act, and the question who a child of tender years is. The court delivered itself as follows:-

“The question therefore is, who is a child of tender years? The Sexual Offences Act and the Oaths and Statutory Declarations Act are silent on this question. However way back in 1959 in the celebrated case of Kibageny Arap Kolil -Vs- Republic (1959) EA 82 the Court of Appeal for Eastern Africa held that the phrase “a child of tender years” meant a child under the age of 14 years. The only statutory definition of a “child of tender years” is Section 2 of the Children Act where it is defined to mean a child under the age of 10 years. This Court has recently in Patrick Kathurima -Vs- Republic, Criminal Appeal No.137 of 2014 and in Samuel Warui Karimi -Vs- Republic Criminal Appeal No.16 of 2014 stated categorically that the definition in the Children Act is not of general application; that it was only intended for the protection of children from criminal responsibility and not as a test of competency to testify. It follows therefore that the time-honoured 14 years remains the correct threshold for *voir dire* examination. It follows from a long line of decisions that *voir dire* examination on children of tender years must be conducted and that failure to do so does not *per se* vitiate the entire prosecution case. But the evidence taken without examination of a child of tender years to determine the child’s intelligence or understanding of the nature of the oath cannot be used to convict an accused person. But it is equally true, as this Court recently found that;

In appropriate case where voir dire is not conducted, but there is sufficient independent evidence to support the charge... the court may still be able to uphold the conviction.

See Athumani Ali Mwinyi -Vs- Republic Cr. Appeal No.11 of 2015”

24. Based on the foregoing, the deceased herein who was 13 years old qualifies as a child of tender years. The question of her competence as a witness could only be gauged indirectly through evidence of those who knew and interacted with her. From the evidence by **PW1, PW3, PW5, PW6 and PW7** she was an ordinary 13 years old girl.

25. There is nothing to suggest that her intelligence was in any way below average or that she suffered any handicap that would have rendered her an incompetent witness. She was in the same school and class as the Subject. She was evidently coherent and alert while interacting with **PW1 and PW3**, and later on with **PW5 and PW6** on the way to hospital. That said, her statements must be examined with care, and the court is under a duty to seek corroboration thereof in other portions of the prosecution evidence.

26. In the case of **John Matu Gichuru -Vs- Republic Criminal Appeal No. 53 of 1997**, the deceased was attacked in darkness by a group of men. Before his death he told several persons that the Appellant was among those who had assaulted him. The Court of Appeal stated regarding dying declarations that:

“In respect of dying declarations we would quote, as did the Court of Appeal for Eastern Africa, the following passage from the judgment of that Court in Jasunga Akumu -Vs- Republic (2) [1954] E.A.C.A. at P. 334:

The question of the caution to be exercised in the reception of dying declarations and the necessity for their corroboration has been considered by this Court in numerous cases, and a passage from FIELD ON EVIDENCE (7th Edition) has repeatedly been cited with approval.

The caution with which this kind of testimony should be received has often been commented upon. The test of cross-examination may be wholly wanting; andthe particulars of violence may have occurred under circumstances of confusion and surprise calculated to prevent their being accurately observed..... The deceased may have stated his inferences from facts concerning which he may have omitted important particulars, form not having his attention called to them.

In the case of Okale –Vs- Republic [1965] E.A. 555 the Court of Appeal for East Africa said (after reference to Jasunga Akumu case) at Page 558:

“Particular caution must be exercised when an attack takes place in darkness when identification of an assailant is, usually, more difficult than in daylight (Republic -Vs- Ramazani bin Mirandu (1934), I, E.A.C.A. 107; Republic -Vs- Muyovya bin Msuma); The fact that the deceased told different persons that the appellant was the assailant is evidence of consistency of his belief that such was the case: it is no guarantee of accuracy.” (emphasis added).

27. In the instant case the Subject admits to have been in the company of the deceased on the material evening before 6.00pm. He says the deceased trailed him but there is no mention of a third party joining the duo in the initial stages while they walked along the village path. Nevertheless, the two met before it was dark, and from the Subject’s account, he first went over to a close by shop and bought sweets before heading up home via a longer route that cut through **PW8’s** shamba, with the deceased in tow. The Subject said that it was not dark when he left home on the material date and from the accounts of his movements, he spent little time at the shop before allegedly taking the long route home.

28. The Subject gave vivid descriptions of the unfolding events concerning the appearance of the said man, the clothes worn by the strange man and even the fact that he saw blood oozing from the deceased’s temple upon her being stabbed with **Exhibit 4** which, having fallen out of the Subjects pocket, was allegedly picked by the strange man to stab the deceased. But first, he had tried to persuade the subject to stab the deceased, handing him **Exhibit 4**.

29. These details must have led the DPP’s representative to question the Subject regarding lighting at the scene. The Subject stated in cross-examination that:-

“[The] incident occurred at 6.00pm while there was some light.”

The reason the Subject gave for being unable to identify the alleged strange man was that he wore a hat which covered his face and head, exposing only his eyes and the mouth. During re-examination, he said:

“From shop, we reached oat field at 6.00pm. There was light, not a lot of it.”

30. I will be dealing with the question of the interval between 6.00pm and 7.30pm the latter being the time when the Subject knocked on **PW7’s** door to report the attack, the first report. For now it suffices that around the same time that the passers-by, **PW1** and **PW3** heard the deceased crying out in the oat field where they met her half naked and wounded. It is evident that from the shop, the deceased and the Subject walked directly on the path towards the oats farm. Thus, reaching the oat farm area at 6.00pm or soon after.

31. In these circumstances, the deceased must also have had opportunity to see what was happening. If indeed a stranger came by and forced them at knife point to follow him into the oat plantation, ordering the duo to kneel, undress, before he stabbed the deceased with a knife, the deceased should have seen and heard him too. The fact, undenied by the Subject, that he was able, later in the night to lead villagers, including **PW7** to the exact spot where the attack occurred is independent confirmation of the fact that the incident took place in circumstances conducive to visibility.

32. The Subject told the court in his evidence-in-chief that:-

“They (PW7 and villagers) demanded I lead them to the scene of attack. We went there and I showed them the scene. She was not there (NW – deceased). It was dark then so we used torches.”

33. **PW7** noted that the scene was splattered with blood, also confirmed by the photographs taken by police. The explanation given by the Subject when he arrived at **PW7’s** was that he and the deceased

were from the shop to buy sweets, when the attack occurred. He did not say to her or any other witness he spoke to, **PW3** and **PW4** included, that the deceased had trailed him while he was going about his own business.

34. He said to the witnesses that the two had gone to the shop to buy sweets. He also said that as they went home, the deceased requested that they have sex in the oat field, and not that anyone forced them into the field. If **PW4** and **PW7** could be accused of bias being close relatives to the deceased, **PW3** was a fellow villager but a distant relative of the deceased who did not even know the deceased. He acted as a Good Samaritan who was forced to inquire about cries he heard while walking to his own errand.

35. His narration of what the Subject reported when he was escorted to the dispensary by **PW4** and **PW7** was as follows:-

“P came with aunt of the girl – J (PW4) and he said: “I am P” when we asked, who is P? We were at gate of dispensary. I questioned him. He said he was with the girl..... I asked what happened. He said he and “NW” went to buy sweets and decided to have sex. That a man came and forced him to do some action. But I stopped him out of fear of the group gathered and suggested we go to police station.”

36. Notably, similar statements were separately made by the Subject to **PW4** before word came that the deceased was at the local dispensary, and to **PW3** when the Subject in the company of **PW4** and others arrived at the hospital. There is evidence by the Subject’s mother **PW2** and by **PW4** and **PW7** that the Subject was a playmate of the local children, including the deceased and that the deceased often visited the home of the Subject and vice versa. There was in the circumstances no chance that the deceased could have mistaken the Subject for another person or have reason to make a false allegation against the Subject. The fact that they were together voluntarily on the material evening also suggests cordial relations between them. It is therefore my considered view that the deceased’s dying declaration was accurate and is believable.

37. That said, the dying declaration by the deceased alone is not sufficient, and the court must seek corroboration. This comes by way of several strands of evidence, most of them circumstantial. Firstly, the Subject’s knife admittedly stabbed the deceased. The Government Analyst’s report was ample evidence of the fact, and the Subject admitted having had the knife in question on the material evening before meeting the deceased.

38. The possession of the knife by the Subject of the fateful evening is intriguing. Although his mother and the Subject claimed he normally used it for cutting fodder for his rabbits, it was not clear from his evidence why he left home with the knife when the stated purpose of leaving home as per his evidence-in-chief was that he was going to the shop for sweets. Nonetheless when pressed during cross-examination he could not name the kind of sweets he purchased.

39. Under cross-examination the Subject said he also intended to go cut fodder for his rabbits after the shop. Apart from narrating how the deceased allegedly trailed him as he walked home, there is no indication that he collected or attempted to collect any fodder prior to the incident at 6.00pm when he alleges he was heading home. I have alluded to the fact that, while the stabbing incident on the Subject’s account happened around 6.00pm, it was not until 7.30pm when the Subject reported the matter to **PW7**.

40. In his evidence the Subject said when he escaped he ran towards **PW7**’s house and he got to **PW7**’s door at 7.00pm. When asked why he did not seek help from homes closer to the oats field, he claimed that nobody was there while admitting he did not go there. He also stated that **PW7**’s home was about 10 to 15 metres from the scene. When pressed to explain, he said that after the attack he “*went upwards and not directly to Esther’s (PW7).*”

41. In his evidence-in-chief he had told the court that he got out of the field through a hole in the fence and ran towards the home of **NW**’s aunt. Is it possible that he took nearly an hour to cover a distance of 10 to 15 metres while running? In my own view, the answer to the lapse of time between the alleged

incident at 6.00pm and the report at 7.00pm to 7.30pm lies in what the Subject told **PW3** and **PW4**, and the circumstance of the scene of attack as captured in the prosecution photographs especially Exhibit 1c and 1i, and evidence of **PW1** and **PW3** as to the state of deceased when he arrived on the scene at 7.30pm.

42. That the deceased was found near naked by **PW1** and **PW3** at the scene tends to confirm evidence by **PW3** and **PW4** that the Subject said he and the deceased had “agreed” to have sex in the oats field. From the post mortem results, there was no evidence that the deceased had engaged in sexual activity, although **PW3** said the Subject had claimed to him that the strange assailant violated the deceased.

43. While motive is not an element of the present offence, it is important in explaining several questions arising from some of the evidence in this case, and from the account given by the Subject, the probable reason he and the deceased linked up discreetly on the material date was an amorous intention by one or both of them.

44. The Subject was admittedly the last person seen with the deceased before she sustained the fatal injuries. He had first gone to her home and then gone to a shop and joined up with the deceased who was at her home on that date. The events unfolding thereafter are matters within his knowledge.

45. Under Section 111 of the Evidence Act, the Subject is obligated to give an explanation as to what happened. The Section provides that:-

“(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 defense creates a reasonable doubt as to the guilt of the accused person in respect of that offence.

(2) Nothing in this section shall:-

(a) prejudice or diminish in any respect the obligation to establish by evidence according to law any acts, omissions or intentions which are legally necessary to constitute the offence with which the person accused is charged; or

(b) impose on the prosecution the burden of proving that the circumstances or facts described in subsection (1) of this section do not exist; or

(c) affect the burden placed upon an accused person to prove a defence of intoxication or insanity.”

46. The Subject’s explanation in my view is part fiction. His entire narration regarding the incident with the nondescript man in a black track suit and black hat (per **PW3** white track suit) on the road has the ring of fantasy. But even more bizarre and incredible is the Subject’s account thereafter, starting with the man allegedly forcing the two children into the oats farm, ordering them to kneel, undress, giving the subject a knife to stab the deceased, later interchanging the knife with **Exhibit 4** and demanding that the Subject stabs the deceased. It sounds remarkable that the said stranger was only interested in harming the deceased and had little interest in the Subject. The deceased was not sexually molested begging the question as to what the motive of the mysterious man could have been. How the said man held two

knives and was able at the same time to stab the deceased while also holding the Subject by the throat is hard to conceive.

47. The Subject's further claim that the deceased did not scream even after a stab which left the knife **Exhibit 4** impaled in her temple beggars belief. Yet **PW1** and **PW3** were attracted from the road to the scene at 7.30pm by the cries of the deceased. This mysterious man, of whom the Subject said in cross-examination that he would not tell if he was light or dark skinned, is an invention of the Subject, in my considered view. All the more because, the subject himself sustained no injury even as his own knife inflicted the injuries on the deceased. And more over, his account to **PW3** and **PW4** was that he and the deceased had gone into the oat farm to have sex, not that anyone forced them from the road to the oats field.

48. In my opinion, the Subject made up some key parts of his defence to explain *inter alia* the presence of the deceased's blood on his knife and the fatal injuries sustained by the girl last seen with him in the village on the material evening. In all probability, the Subject and the deceased had agreed to a secret rendezvous in the oat farm clearing, on a "date" of sorts. It seems likely that the Subject had on his mind more than a mere 'date' hence his possession of the knife. Possibly, the deceased may have disagreed on actual sexual intercourse with the Subject, leading to a struggle in which the deceased's trouser was pulled down and she sustained the blunt severe injury noted on her abdomen.

49. And that having failed in his attempt, the Subject used the knife he carried to stab the deceased severally, in order to cover up for his attempt to force her to have sex with him. Hoping that she would die from the injuries, he delayed making a report in which time he had concocted the perfect story concerning the preceding events, all aimed at absolving himself.

50. The fact that he arrived at **PW7's** door trembling and panting or that he abandoned his shoes at the scene does not support his incredible invention on the appearance and role of the mystery man. It may well be that having stabbed the deceased the Subject stayed close by whiling time away, and may have noted the approach by **PW1** and **PW3** with the light towards the scene. And likely, at that moment he bolted off to **PW7's** to make a report on the alleged attack by an unknown man.

51. Such conduct is consistent in my view with the manner in which the Subject presented himself in his testimony before me. He appeared agile at making things up as he went along. Sadly, I got the impression of a child who is fairly intelligent, but also one who has mastered the art of lying and deception. Even as he gave his evidence, he was careful to cover any seeming loophole or crack. He has a fertile but obviously corrupted imagination. Little wonder he claimed to **PW3** that the nondescript man forced him and the deceased to do a certain act, and was careful to explain to this court that the said man forced him and the deceased to undress and lie down at the scene. Evidently, the latter statement was intended to explain why the deceased was found exposed from waist down.

52. In the case of **Ndungu Kimanyi -Versus- Republic (1979) KLR 282**, Court of Appeal stated in such regard that:-

"...we lay down the minimum standard as follows: The witness upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not straight forward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore unreliable witness which makes it unsafe to accept his evidence."

53. The Subject's defence is as unbelievable as his first story to **PW7** and **PW3** on the material night as to how the deceased was injured. It was conjured up to absolve him. The circumstances in which he was armed with a knife, the fact that the deceased was naked below the waist and that she sustained multiple vicious stabs, in addition to a blunt abdomen injury, strongly support the conclusion in this case, that the Subject had upon being rebuffed by the deceased, formed an intention to commit a sexual assault upon her, and when that failed, he stabbed the deceased, with the intention to kill or maim her in order to cover up his actions. That is, with malice aforethought as envisaged in Section 206 of the Penal Code.

54. I do find that the dying declaration in this case was well corroborated by the circumstantial evidence tendered herein, and that, the said evidence totally displaces the Subject's incredulous defence. The prosecution has proved its case beyond reasonable doubt and I record a finding of guilty as charged against the Subject.

Delivered and signed in Naivasha this **19th** day of **May, 2017**.

In the presence of:-

Mr. Mutinda for the DPP

Mr. Mburu for the Subject

Subject - present

C/C - Barasa

C. MEOLI

JUDGE