



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT MIGORI**  
**CRIMINAL CASE NO. 68 OF 2014**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ENOCK APELE AKOKO ..... ACCUSED**

**JUDGMENT**

1. On 20<sup>th</sup> September 2014, **JANET AWUOR PAULETTE** (“Paulette” “the deceased”), a student had travelled to Migori to see her boyfriend where she spent the night at a hotel with him. On 22<sup>nd</sup> September 2014, the caretaker at the hotel was confronted by a foul smell from the room where the deceased and her boyfriend had stayed. When the door was opened the deceased body was found in a decomposing state. On 22<sup>nd</sup> October 2014, this court was informed that **ENOCK APELE AKOKO** had murdered the deceased between the night of 19<sup>th</sup> and 20<sup>th</sup> September 2014 at Highway Complex Lodge in Migori Township within Migori County. The accused denied the charges and the prosecution called 10 witnesses while the accused elected to give sworn testimony in his defence.
2. The manager of Highway Complex Lodge situated in Migori, Beatrice Akoth Amimo (PW 1) testified that she was on duty on 22<sup>nd</sup> September 2014. Part of her morning duties was to confirm which rooms were booked and those which were not booked. After finishing inspection on that morning, she went to distribute soap and tissue. While on the 2<sup>nd</sup> floor corner, she was attacked by a foul smell. She thought the dustbins were full but when she checked they were not. On reaching room 228, the foul smell became stronger. She also noticed flies. She immediately called her colleague Judith Adhiambo Otieno (PW 2) who was also cleaning on that floor.
3. PW 2 told her that a man had booked the room on 19<sup>th</sup> September 2014. As they discussed what to do, PW 1 went to collect the duplicate key from the office. She also called another colleague Monica Adoyo. She opened the door after gathering courage. PW 2 peered inside and told her that she could see ladies shoes and a bag on top of the table. The smell was too much so she closed the door immediately without entering to see what was inside.
4. PW 1 called watchman Norbert Mwangi and asked him to go and see what was in the room. Norbert proceeded to the room and beckoned her to come. He told her there was a dead body in the room. PW 1, PW 2 and Monica Adoyo entered the room. PW 1 and PW 2 testified that she saw a body of a lady on the bed covered upto the neck. She was lying on her back and facing the wall. Her hair was braided. PW 1 asked Norbert to remove the blanket and she observed that the upper body was naked and she was wearing a light green underpant and her trousers were upto the

knees.

5. PW 1 called the owner of the establishment who called the Commanding Officer of Migori Police Station. When the police came later in the day, PW 1 saw items being removed from the room including a black leather bag, a syringe and bottle of what looked like quinine. The black bag contained the identity card of Janet Paulette Awuor. When she entered the room she also saw a tissue paper written "*Pastor Akoko, Migori SDA Central Church.*" The police took the body and beddings.
6. Judith Adhiambo Otieno (PW 2) was present with PW 1 when the deceased body was discovered and when the police came. She testified that she was the receptionist at Highway Complex Lodge and that part of her work was to receive customers and book them in rooms. She explained that she stated that she would normally registers the name of the guest in full, the identity card ("ID") number and phone number.
7. She recalled that a man, whom she did not know, had booked room 228 on Friday, 19<sup>th</sup> September 2014 at about 8.00pm and identified himself as **Otieno O**. When she asked for his identify card, he told her he had forgotten it but he gave her the name and ID number 11\*\*\*23 and phone number 0700\*\*\*481. She stated that he stayed in the room for 3 days. She asked him pay Kshs. 600/= which he paid. He also paid Kshs.600/- for the Saturday at 7.30am. On Sunday, 21<sup>st</sup> September 2014 he once again paid Kshs.600/- at 7.30am. On Monday, 22<sup>nd</sup> September 2014 at 7.30 am, the guest told her that he was going to look for money and he would pay her. PW 2 confirmed that she is the one who recorded the entries for Friday, 19<sup>th</sup> September 2014 for room 228. He did not come back and she did not see him again. After the man had left PW 1 came and they started cleaning the rooms with the other ladies. It is at this time that PW 1 alerted them of a foul smell emanating from room 228 on the 2<sup>nd</sup> floor.
8. PW 2 further testified that she never saw the man who had booked room 228 until 23<sup>rd</sup> September 2014 when she was called to go to Migori Police Station. She participated in an identification parade where she duly identified the accused as the person whom she had booked into room 228. She also stated that she did not know the deceased and that she never saw her enter the room.
9. Paulette's father, Solomon Otieno Agend'o (PW 3), testified that his daughter was 19 years old and a student at Maasai Mara University. On 19<sup>th</sup> September 2014, he tried calling her but the call was not going through. On 20<sup>th</sup> September 2014 at about 4.00pm, PW 3 recalled that his sister Lilian Akoth (PW 5), who was residing in Migori, told him that Janet had been seen in Migori. They tried calling Janet without success. On 23<sup>rd</sup> September 2014 at about 7.00am, he received a call from his brother John Olang' (PW 4) to come to Migori Police Station CID Offices. PW 4 had received a call from a resident in Kanga at about 7.20am asking him whether he knew Janet Paulette Awuor. As he knew her, he was told to go to the Migori Police Station CID offices to follow up. He called PW 3 and told him to go to the police station.
10. When PW 3 arrived at the station, the District Criminal Investigation Officer ("DCIO") asked him whether he knew Janet Paulette Awuor. He was shown an Identity Card bearing that name and he confirmed that it was that of his daughter. He was told that she was found dead at Highway Lodge, Migori and that the body was at Migori Level 4 Hospital Mortuary. He went to the Mortuary and confirmed that the body was that of Paulette. PW 4 joined him at the mortuary. Both PW 3 and PW 4 identified the body when the post mortem was done on 23<sup>rd</sup> September 2014.
11. PW 3 confirmed that he knew the accused when he was informed that the accused had been arrested for the murder of his daughter. He testified that on 24<sup>th</sup> August 2014, he found Paulette and the accused at the home of the accused's father in Total area in Migori. PW 5, who was a neighbor of the accused, saw them and called him by phone. He took them to Migori Police Station because Janet had left her four month child at home. He did not know the father. The

- police at Migori referred him to Awendo Police Station because he lived there. They went to Awendo Police Station on 24<sup>th</sup> August 2014 and since Paulette accepted to take the child and since she was over 18 years old, the accused could not be charged. Janet and the accused remained at Awendo Police station. Janet was released on 25<sup>th</sup> August and she went home while the accused was later released and went to Migori. PW 3 testified that Paulette stayed home until 9<sup>th</sup> September 2014 when he took her to University and left her there. He did not see her thereafter.
12. Janet's aunt, Lilian Okoth Ngeng'o (PW 5) knew the accused as they were neighbours in Total area. She recalled that in August 2014, she had seen Paulette and the accused. She narrated how she tried to intervene in their relationship without success. At the time Paulette had come to Migori to collect her admission letter to the University and ended up staying with the accused despite her intervention. After this, the accused would talk loudly across the fence and insult her for trying to interfere in the relationship. Due to the insults PW 5 decided to move to another location.
  13. On 22<sup>nd</sup> September 2014, PW 5 received a call from her former neighbor at Total called Linda inquiring whether she knew that Paulette was in Migori Town. Linda told her that Paulette had been seen with the accused over the weekend. She called Paulette's mother and asked her whether she heard that Paulette was in Migori. Paulette's mother told her they talked on 19<sup>th</sup> September and that Paulette told her that she was in school. She also told her that Paulette's phone was off since 19<sup>th</sup> September after they spoke.
  14. On the following day in the morning as PW 5 was preparing to go to work, PW 4 called her and asked whether she had heard a body that had been found in a lodging where Paulette's ID was also found. PW 5 told him she had not heard of the story. She proceeded to Migori District Hospital Mortuary where she found a body which she confirmed was that of Paulette.
  15. Dr Jared Ndege (PW 9) conducted a post mortem on the body of the deceased on 23<sup>rd</sup> September 2014 at Migori District Hospital. On external appearance of the body he noted that there was a penetrative wound on the right anterior side of the neck. On dissection of the body, the deceased had blood in the chest cavity resulting from a penetrative wound running oblique into the right lung cavity causing bleeding into the lung. He also noted that the uterus on dissection had pus in the ovaries and tubes. The other systems were normal. He certified the cause of death as severe bleeding in the chest cavity caused by a penetrating lung injury.
  16. Dr Ndege also testified on behalf of Dr Wafula Nalo who had been requested to examine the accused and determine whether he was mentally fit to stand trial. He confirmed that he knew the doctor as he had worked under him for two years while at Migori district Hospital. He was familiar with his handwriting and signature. He testified that the accused was examined on 23<sup>rd</sup> September 2014. He recorded that the accused was well kempt with creased clothes in open sandals and a black long sleeved shirt. He was handcuffed. He noted that the accused had normal mental function and that he had bruises on the anterior aspect of the scalp and upper limbs. On the lower limbs he had bruises on the mid shaft of the right leg. On appearance the accused was well groomed. The accused had defected eyes and positively responded to interview. He was calm, he had normal speech. He was fully alert and well oriented. He had normal memory, literate and good arithmetic skills. His thought process was intact. He had insight and could make rational decisions. The doctor concluded he could stand trial. Upon cross-examination, he noted the injuries were 12 hours fresh and that the probable weapon used to inflict the injuries were human nails.
  17. Chief Inspector Evans K Sang (PW 10), the Deputy DCIO of Migori was the investigating officer in the matter. He recalled that on 22<sup>nd</sup> September 2014 while in the office, he received a report from the management of Highway Lodge along the Migori Isebania Highway that there was a decomposing body in room No. 228 on the top floor. Together with other officers, among them the Scenes of Crime Officer, Corporal Benson Ingosi (PW 7), he proceeded to the lodge where

they were met by foul smell emanating from the room. After opening the room they found the decomposing dead body of young girl lying in a pool of blood on top of the bed. They took the body to Migori Level 4 Hospital District Mortuary for preservation and post-mortem.

18. PW 7 stated that he was a duly gazetted Scenes of Crimes officer under Gazette Notice No.1217 of 2012. He confirmed that he accompanied PW 10 to the crime scene at Highway Complex Lodge where they found the decomposing body of a deceased woman in room 228. He found the deceased lying on the bed half naked covered with a blanket. Inside the room were several items including used syringes, empty alcohol bottles and personal belongings of the deceased. On close observation of the body, he noticed a stab wound on the neck and traces of blood around the nose and the mouth. He advised PW 10 to collect the items found in the room as exhibits and proceeded to take the following photographs which he processed and produced in evidence as follows;

- Exhibits 6 A & B; General view of the rooms on the floor.
- Exhibits 6 F & G; Close up shots showing the facial view of the deceased and injury and traces of blood on the mouth and nose and also injuries on the neck.

19. PW 10 made inquiries from PW 1 and PW 2 and was told that the deceased checked into the room with another young man on 20<sup>th</sup> September 2014 and with a man who identified himself as Mr Otieno. They found an assortment of items in the room including a black handbag which had personal effects. Inside the bag was a purse with an Identity Card No. 32602243 (Exhibit 13A) in the name of Janet Awuor Paulette. There was also two passenger recent tickets issued by Nolex Services KBM 328M issued on 20<sup>th</sup> September 2014 (Exhibit 15A) showing that they had travelled from Narok to Migori and the fare paid was Kshs.700/= There was a note written on white tissue paper written "**Pastor Moses Akoko, Migori Central SDA Church, Moses Akoko Dudi**" (Exhibit 16). PW 10 received the register used to record guests (Exhibit 2) and established that the deceased had checked into the room on 20<sup>th</sup> September 2014.

20. After finding the note Exhibit No. 16 which referred to pastor Moses Akoko, he immediately went to Migori Central SDA church. He was informed that he resided near the church. He found Pastor Moses Akoko on 23<sup>rd</sup> September 2014 in his homestead. The pastor confirmed that the accused was his son but that he was not in the house. The pastor told them that on the previous day the accused had brought a lady home, they had supper and they said they were going to spend the night in town. As they were there, PW 10 received information that the accused's mother had come to the police station.

21. At that time there was a lot of tension in town as the boda boda riders were looking for the accused. The accused's mother Penina Akumu Akoko reported to the Migori Police Station that she knew where her son was. She led them to a house belonging to her friend. When they went to the house, they found the accused sitting dumbfounded and intoxicated. He lost his eyesight. He could not see or talk. He arrested the accused and brought him to Migori Police Station. The accused was taken to hospital where he was treated for his eyesight problem. His mental status was also examined. The doctor concluded that he was fit to stand trial.

22. PW 10 organized for an identification parade to be conducted by Chief Inspector David Kemboi (PW 8) as the identity of the person who identified himself as **Otieno O.** was not known. PW 2 identified the accused. PW 10 concluded from evaluating the evidence that the accused had committed murder and he decided to charge him with murder.

23. The accused elected to make a sworn statement when called upon to defend himself. He testified that on 23<sup>rd</sup> September 2014, he went for eye treatment, after treatment he went to his home near Total, Migori. Thereafter police officers came into the house he was in and told him that he was wanted at Migori Police Station. He could not see them since he had lost his eye sight. He was handcuffed, taken to a vehicle and in a short while found himself in a cell at the police station.

24. On the next morning, his fingerprints were taken and he was asked to sign some papers whose contents he did not know as he could not see at the time. He was later informed that he had committed murder. He stated that when he was arraigned in court on 25<sup>th</sup> September 2014, he still could not see and requested for medical treatment on orders of the court. He denied that he had committed murder.
25. The accused admitted that he knew Janet Awuor Paulette and that she was his fiancée and it is only through the evidence presented in court that he heard that she had been killed. He recalled that the last time he was with her was in the month of August 2014 when her father, PW 3, caused them to be arrested when he found him and Paulette at home at Total. He brought them to Migori Police Station where they were interviewed by the Commanding Officer of Migori Police Station. He concluded they were adults and since we wanted to marry he ordered their release. After release he and Paulette proceeded home but while on the way PW 3 and two others came behind them and took them to Awendo Police Station. PW 3 spoke to the Commanding Officer and he was told that he would know why they were arrested. He slept at the police cell for 2 days while Paulette stayed for 1 day. The accused stated that this was the last time he saw the deceased.
26. The accused testified that since he could not see at the time, he could not tell whether he was on a parade. He was just removed from the cell. He was never told that he was going for a parade. He was removed from the cell twice. The first time, his fingerprints were taken and on the second time, he was told just to go out and after a while he was returned. The accused stated that he was a resident of Migori and that he had lived in the town since he was born. Although he knew where Highway Complex Lodge was, he had never slept there at anytime and definitely not in September. He stated that he had an identity card but he did not have it and that he could not recall his identity card number and that his name of the Identity Card was Enock Apele Akoko.
27. In order to secure a conviction for the offence of murder under the provisions of **section 203 and 204** of the **Penal Code**, the prosecution must prove beyond reasonable doubt the following ingredients;
- a. Proof of the fact and the cause of death of the deceased.
  - b. That the cause of the deceased's death was a result of the direct consequence of the accused's unlawful act or omission.
  - c. Proof that the unlawful act or omission was committed with malice aforethought as defined in **section 206** of the **Penal Code**.
28. The deceased's decomposing body was found in Room 228 of Highway Complex Lodge. Among the items recovered in the room was a black bag which contained an identity card in the name of Paulette Janet Awuor. PW 3 confirmed that she was his daughter. PW 3 and PW 4 also identified her body before the postmortem was carried out.
29. Counsel for the accused submitted that PW 9 was not qualified to conduct a post mortem because he was not a duly gazetted, qualified and competent pathologist. Furthermore, PW 9 did not visit the scene of the incident or even perform laboratory tests on the tissues and organs of the deceased. On this issue I must point out that learned counsel did not point to any legal or statutory authority that requires a postmortem to be carried out by a pathologist or for that matter a gazetted one to establish the cause of death. Establishing the cause of death is a question of fact. The testimony of the doctor is expert opinion intended to assist the court establish the cause of death. Indeed there may be instances where the cause of death may be obvious and where the court may make a finding in the absence of medical evidence. Such cases though are rare and an exception as the Court of Appeal recognized in **Ndungu v Republic NBI CA Crim. App. No. 171 of 1984 [1985]eKLR**

*Of course there are cases, for example where the deceased person was stabbed through the heart or where the head is crushed, where the cause of death would be so obvious that the absence of a post-mortem report would not necessarily be fatal. But even in such cases,*

*medical evidence of the effect of such obvious and grave injuries should be adduced as opinion expert evidence and as supporting evidence of the case of the death in the circumstances relied on by the prosecution. Where a post-mortem examination is performed and a report is prepared, signed and kept in safe custody, but the doctor is not available some other medical expert could give general evidence as an expert, on the basis of the report as to whether the findings of the report are consistent with the case for the prosecution. Even where the doctor is available it is necessary for him to correlate his opinion with the case for the prosecution. Another class of case where there is no medical evidence is the exceptional case where the body has never been found; but we are not dealing with that class. To return to **Republic v Cheya & Another [1973]EA 500**. It is plain to us that the decision must be confined to what must have been an exceptional situation, a great deal of which is not given in the judgment, that the judgment.*

30. In this case though, PW 9 testified that he was a medical officer of 5 years' experience after graduating from the University of Nairobi with an MB Ch B. Degree. Moreover, he stated that pathology was part of his training. I find that he was qualified to carry out a postmortem examination. His findings were consistent with the photographs (Exhibit 6) produced by PW 7 of the deceased neck which show the injuries sustained by the deceased on the neck. PW 9 confirmed that the deceased died and that she died as a result of bleeding in the chest caused by a penetrating injury to the lung. PW 9 established the cause of death and in my view it was not necessary for any tests to be conducted to establish the cause of death or even for him to visit the scene of the incident.
31. The prosecution relied on circumstantial evidence to prove that the cause of the deceased's death was a result of the direct consequence of the accused's unlawful act or omission as no one saw the accused kill the deceased. The well-known and hackneyed principle that has been emphasized by our court over time is that in order to justify, on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. There must be no other co-existing circumstances weakening the chain of circumstances relied on. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden, which never shifts to the party accused (see generally **R v Kipkering Arap Koske & Another [1949] 16 EACA 135** and **Sawe v Republic CA Criminal Appeal No. 2 of 2002 [2003]eKLR**)
32. The prosecution relied on several pieces of evidence to make its case. First, that the accused was in a relationship with and knew the deceased and that he was with the deceased within the period she was murdered. That the accused was the person who booked room 228 of Highway Complex Lodge where the deceased was found and that he had exclusive possession and control of that room. That evidence found in the room pointed to the accused as the murderer. I am now called upon to establish each link closely to establish whether when taken together they point irresistibly and exclusively to the accused's guilt.
33. The accused and the deceased were in relationship. This fact was confirmed by PW 3 and PW 5. The accused in his testimony stated that the deceased was his fiancé. His position was that he did not see the deceased after August 2014 after they had been released from Awendo Police Station. He denied that he saw her in the month of September 2014. The deceased must have left Masaai Mara University, Narok on 20<sup>th</sup> September 2014 as evidenced by the tickets found in her room issued by Nolex Services (Exhibit 51A) and arrived in Migori where she met the accused. PW 5 was informed that the deceased was seen in Migori and when the deceased mother in law called the deceased's roommate and confirmed that indeed the deceased had left Narok for Migori.
34. Was the accused the person who booked room 228 where the deceased's body was found? The answer to this question lay on the identity of the person who PW 2 identified as **Otieno O.** and whom she identified as the accused at the identification parade. Counsel for the accused attacked

the identification parade on the ground that it was not done in accordance with the **Force Standing Orders** and the standards laid down in **Rex v Mwangi s/o Manaa (1936) 3 EACA 29** amongst other cases. Some of the relevant instructions contained in the **Force Standing Orders** are as follows;

1. *The Accused person is always informed that he may have an Advocates or friend present when the parade takes place.*
2. *The officer in charge of the case, although he may be present, does not carry out the identification parade.*
3. *The witness does not see the accused before the parade.*
4. *The accused is place among at least eight persons, as far as possible of similar age, height, general appearance and class of life as himself or herself.*
5. *The accused is allowed to take any position he chooses, and he is allowed to change his position after each identifying witness has left, if he do desires.*
6. ....
7. ....
8. ....
9. ....
10. *The witness is to touch the person he identifies.*
11. *At the termination of the parade or during the parade the accused is to be asked if he is satisfied that the parade is being conducted in a fair manner and a note is to be made of his reply.*
12. ....

35. Chief Inspector David Kemboi (PW 8) was at the time material to this case the Deputy Commanding officer of Migori Police Station On 23<sup>rd</sup> September 2014 at about 4.55pm, he was called upon by Chief Inspector Sang (PW 10) to conduct identification parade where the accused was a murder suspect. He testified that he called the accused and explained to him the purpose of the parade. The accused had no objection to the parade. He prepared members of the parade who were 9 in number. He requested the accused to choose the position he wanted. The accused chose the position between 3 and 4. He went and summoned PW 2 who was accommodated in the CID offices which are opposite the police station. He briefed her on the purpose of the parade and told her to see whether she could identify anyone who was connected with the murder of the deceased person. The witness identified the accused positively by touching his shoulders. The accused was asked to comment he said, “*sina maneno ya kunena.*” After completing the parade, the accused signed the form which he also signed and dated 29<sup>th</sup> September 2014 [Exhibit No. 8].

36. PW 2 testified that when she attended the identification parade, she had been under arrest in a cell and that she did not see the accused prior to the conduct of the parade. Although she could not recall how many people were on the parade, she could remember the accused’s face very well and identified him by touching his shoulder.

37. Although PW 5 did not provide a description of the accused, she knew him and could recognise him as she had seen him for three consecutive days when he came to book the room, when he paid for the room each morning and when he left her and said he would return to pay. Further, not much time had elapsed from the time she last saw the accused to the time she identified him at the parade. I have no doubt the accused was a person she could easily recognise as opposed to a person she had seen for a fleeting moment. I find myself on firm footing by calling in aid the case of **Nathan Kamau Mugwe v Republic CA Criminal Appeal No. 63 of 2008 (UR)** where the Court of Appeal held that the fact that the witnesses had not given to the police the description of the accused before the parade does not necessarily render an otherwise valid parade worthless.

38. The accused suggested that he did not knowingly or willingly participate in the identification parade as he could not see. I reject this line of defence because nothing was suggested to PW 8 in cross-examination that the accused was temporarily blind to the extent that he could not participate in the parade. He did not raise the issue of his incapacity to PW 8 before he conducted the parade. I find that the accused voluntarily signed the identification parade form. Even if I were to accept that he could not see at the time, that fact alone does not negate the fact that PW 2

clearly identified him as the person who booked room 228. In the case of **Mwangi v Republic [1976] K.L.R. 127** the Court of Appeal considered the question whether an irregularity in holding an identity parade would necessarily lead to the exclusion of evidence of identification. The Court held that whether or not the conduct of an identification parade is so irregular as to necessitate its being disregarded is a question of degree to be decided in the light of the circumstances of each case. Having considered the facts of the case vis-à-vis the requirements of carrying out an identification parade I have set out above, I am satisfied that the parade was properly conducted and that the accused was identified by PW 2. I therefore find and hold that it is the accused who booked room 228 of Highway Complex Lodge.

39. PW 2 testified that she gave the accused the key to room 228. He therefore had possession of the room from 20<sup>th</sup> September 2014 upto the time the deceased's body was discovered. When PW 2 demanded payment on the last day, the accused went with the key and promised to pay later. The fact that the accused had the key is confirmed by the testimony of PW 1 and PW 2 who testified that when the room 228 had to be opened they had to use the master key. Besides, since the deceased decomposing body was found, it means that none of the hotel employees or guests had access to the room prior to that time as they would have discovered the body much earlier. As a result I find and hold that the accused had exclusive control of room 228 where the deceased body was found.

40. Since the accused had exclusive possession and control of the room he was obliged to provide a reasonable explanation as to why the body of his fiancé was in the room. In **Wilson Wanjala Mkendeshwo v Republic NKU CA Crim App. No. 97 of 2002 [2002]eKLR**, the Court of Appeal stated that;

*As a general rule the accused assumes no legal burden of establishing his innocence. However, in certain limited cases the law places a burden on the accused to explain matters which are peculiarly within his own personal knowledge. For instance section 111 of the Evidence Act, Cap. 80 of the Laws of Kenya, provides that in criminal cases an accused person is legally duty bound to explain, of course on a balance of probabilities, matters or facts which are peculiarly within his own knowledge. The said section is silent on what would happen if he fails to do so. But section 119 of the same Act deals with presumptions of fact. A court is entitled under that section to raise a presumption of fact from the circumstances of the case, that the appellant knew how the deceased died. The presumption being one of fact is rebuttable.*

41. Although he was a native of Migori, the accused flatly denied that he had ever visited or at least slept in Highway Complex Lodge. This defence was hollow in light of the testimony of PW 2 which placed him in the hotel over the three days. In addition, when the hotel room was searched the police found a piece of tissue paper written "**Pastor Moses Akoko, Migori Central SDA Church, Moses Akoko Dudi**". PW 1 confirmed that she saw it when it was removed from the room. While I cannot speculate who wrote it or why it was written, it is another piece of evidence that relates the scene of the incident to the accused. It led PW 10 to the home of Pastor Akoko who confirmed that the accused was his son and that he had been home with a lady the previous night when they had supper.

42. The accused was the only person with exclusive control of room 228 where the deceased's decomposing body was found. While this court is left to speculate on the motive of his act, under **section 9(3)** of the **Penal Code** the lack of a motive is not necessary to prove murder though it may be useful in piecing all the circumstantial evidence together (see **Choge v Republic [1985]KLR 1** and **Libambula v Republic [2003] KLR 683**). **Having reviewed all the evidence, I am satisfied that all the evidence inextricably points to the accused.**

43. **There could be no clearer evidence of malice aforethought than piercing the deceased's neck with a sharp instrument, likely the needles (Exhibit 14A and B) found in the room, penetrating into the lungs causing her to bleed in the chest cavity. Such an injury could only**

**be inflicted with, “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,” within the meaning of section 206(a) of the Penal Code.**

44. For the reasons I have outlined, I find the prosecution proved its case beyond reasonable doubt. I therefore find the accused **ENOCK APELE AKOKO** guilty of the murder of **JANET AWUOR PAULETTE** and I convict him accordingly.

**DATED and DELIVERED at MIGORI this 16<sup>th</sup> day of November 2015**

**D.S. MAJANJA**

**JUDGE**

Mr Odingo instructed by Odingo and Company Advocates for the accused.

Ms Owenga, Senior Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the State.