



REPUBLIC OF KENYA



**Republic v Kasila (Criminal Case 59 of 2013)  
[2025] KEHC 2438 (KLR) (21 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 2438 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL CASE 59 OF 2013**

**FR OLEL, J  
JANUARY 21, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**DANIEL MUNYOKI KASILA ..... ACCUSED**

**JUDGMENT**

**A. Introduction**

1. The accused person herein Daniel Munyoki Kasila was charged with the offence of murder contrary to Section 203 as read with Section 204 of the penal code (Cap 63). The particulars of the offence were that on the 8<sup>th</sup> day of June 2013 at Kinanie area of Athi River district within Machakos County, he murdered Grace Mbenyi Wambua.
2. The accused person herein pleaded not guilty and the matter proceeded to full trial with the prosecution calling five (5) witnesses. At the close of the prosecution case, the accused was placed on his defence and gave sworn evidence where he denied committing the offence.

**B. Prosecution case**

3. PW1 John Mutiso Kivuva recalled that on 07.06.2012. he was with the accused person, and two of their neighbors' children, harvesting and sorting out tomatoes for their employer the late Grace Mbenyi Wambu, at her farm situated at Kinanie area of Athi River sub county. They were later joined by their employer at about at about 10.00 a.m. and she stayed at the farm until about 8.00 p.m., when she left and informed him that she would be back on the following day to collect the remaining tomatoes.
4. Indeed, on the following day at about noon, she arrived and inquired about the whereabouts of the accused person. She called for him and when he arrived directed them to remove firewood from the car and went on to inspect the ongoing farm activities. Later on, he left the accused person assisting



- the deceased in arranging flowers within the compound and went on to water the maize plantation as directed by their employer. After a while, he heard the deceased scream for help, and immediately run towards the main house with the aim of assisting her. On reaching the small gate used to enter the farm from the main compound, he noticed and picked up the deceased car keys from the ground. Then to his dismay, found the deceased lying down on the right side of her car, bleeding profusely from deep cuts she had sustained on her head.
5. Shocked at what he had stumbled upon, he shouted for help and immediate neighbors, including PW2 rushed to assist him. They attempted to carried out first Aid on the deceased to stop the bleeding, while also looking for means to rush her to hospital, but unfortunately, she lost her life while still at the scene of the incident.PW1 also clarified that at this point in time, the accused person had escaped and was not at the scene.
  6. They called the police, who came to the scene and together with his neighbors started to look for the accused person within the vicinity of the farm but were not successful in tracing him. The deceased body was taken to the mortuary and he was later informed the accused had been arrested and was summoned to record his statement at Athi River police station. PW1 further confirmed that before this incident, the accused person had been a regular worker at the deceased farm.
  7. PW1 further testified that on the material day, they were the only two employees at the farm and after the deceased had entered her farm, he had locked the main gate with a padlock and had the gate keys while the small gate was not locked. He reiterated that once the police came, they had searched for the accused person all over the farm vicinity but he was nowhere to be seen. On further inspection of the compound, they realized that he must have escaped over the chain link fence as there were signs of someone having escaped by passing through/stepping on the said fence.
  8. Under cross-examination, PW1 confirmed that the deceased had informed him that she had previously employed the accused person to work at her farm in Mbooni, but did not know the terms of engagement. On the material day, he heard the deceased scream and dashed to go assist her. He did not know nor did he see any third party, who had entered the farm and attacked the deceased, but that proposition was unlikely as the farm gate was closed. He also confirmed that he had left the accused person and the deceased weeding/arranging flowers by hand and the accused had in his possession a panga, which was not found at the scene of the incident after he fled.
  9. PW1 reiterated on re-examination that on the material day, they were only two (2) employees at the farm, and were later joined in the afternoon by the deceased. There was no sign of forced entry into the compound by any third party but someone, who they suspected to have been the accused person had stepped on the fence and jumped out. The accused person also had a panga which he was using to weed the flowers and after the incident occurred, he took off with the said panga and was nowhere to be found, despite being look for by immediate neighbors’ .
  10. PW2 Pius Mutati, testified that he worked at Kananie within Athi River, farmland and was employed by one Janet Maweu. On 08.06.2013 at about 12.30 pm he was working at the farm, when he heard screams from the neighbouring farm belonging to the deceased. After a few minutes, PW1 called him and informed him that the deceased had been injured and he needed help to rush her to the hospital. He follows Pw1 back to their farm and saw the deceased lying on the ground and had suffered cut wounds on her head, arm, and shoulder. He told PW1 to remain behind as he rushed to look for help to take her to the hospital. He also called his employer’s husband, who in turn called the deceased sister. He was in shock and by the time he went back to the incident scene, the victim had unfortunately died.
  11. PW2 further testified that he had inquired from PW1, what had transpired and he informed him that he had left the deceased with the accused person and had gone to the farm to water the maize plantation.



- He heard screams and rushed back to help his employer only to meet the horrendous scenario. The area chief and police came to the scene and with the help other neighbour's, they divided themselves into groups to search for the accused person within the vicinity of the farm, but were unable to trace him.
12. He had known the accused person for about three (3) years as he used to work for the deceased at her parents' home in Mbooni and occasionally come to assist the deceased. But after completing his work at kinanie would return Mbooni, where he was mainly based. He further clarified that at time of the incident, the accused person had been working exclusively at the deceased compound where the incident had occurred.
  13. He was not related to the accused person as they were just co-workers. Under cross-examination, PW2 confirmed that the accused had started working at farmland area before him and the farm where he worked was the neighbouring farm, which was about 100m away from the deceased farm. The deceased home within the farm was fenced and had a gate hence one could not see inside the compound.
  14. On the material day he had gone to collect water at about 10.00am and had seen the accused person work next to the common boundary fence, which was made of sisal and he did not know at what time he had left work. When he responded to PW1's shout for help, he found him alone as the accused person was not at the scene of the crime.
  15. In re-examination, PW2 reaffirmed that the deceased farm had trees planted inside and had a barbed wire fence, and therefore one could see through into the said farm. On the material day, he saw the accused person working within the farm at about 9.30 a.m. and they exchanged pleasantries. Later on in the afternoon, he first heard screams and shortly thereafter PW1 came running and beckoned him to come to assist him, which he did, and when he arrived at the scene he found that the deceased lying next to her car and had suffered severe panga cut injuries. Unfortunately, she lost her life as they attempted to get means to rush her to hospital.
  16. PW3 Catherine Muthoki Wambua stated that she resided at Mlolongo and worked as a manager for a Telecommunication company. On 08.03.2013 at about 1.00 pm she was at work when she received a call from her sister PW5, who informed her that their other sister Grace (the deceased) had been attacked at her farm. She rushed to the incident scene only to find that their sister had succumbed to the injuries sustained in the attack and her body was lying on the ground covered by a blanket next to her car. She uncovered her sister's body and observed that some of her fingers had been chopped off and she had also sustained several panga cuts on her head.
  17. The police came and processed the incident scene before removing her deceased sister's body for preservation at Lee Funeral Home. Later, she also identified her deceased sister's body before the post-mortem was carried out at the said funeral home. PW3 also confirmed that PW1 was present at the scene of the crime but the accused person was nowhere to be seen. He was a person well known to her having previously worked for their father before he began to work for the deceased. She further disclosed that the deceased had expressed her discomfort with the accused person to her but did not reveal the details/genesis of their problem/conflict. After the incident, the accused disappeared and was arrested months later in December 2013.
  18. Upon cross-examination PW3 confirmed that she had visited the deceased farm several times and it had a live fence with bougainvillea trees planted along the said fence. Depending on where one was seated some areas of the fence had gaps but the vegetation along the roadside was pretty thick and also had a solid gate. The farm was about 5 acres in size and reiterated that she did not know why the deceased was uncomfortable with the accused as the deceased had not revealed the details or genesis of their disagreement. She also did not know if the accused was at the scene of the crime.



19. In re-examination she reaffirmed her observation as to the state of the farm live fence and also confirmed that their father's farm was at Kimutwa, where the accused person was majorly based and they too would visit the said farm regularly. She also confirmed that she had no knowledge of any previous violent confrontation between the deceased and the accused.
20. PW4 Enock Mbundo Kituku, testified that he was a boda boda rider and did not know the accused person. On 27.11.2013 at about 3.00 pm he was at Athi River police station sorting out his issues when he was called by the station OCS and asked his tribe to which he replied that he was a kamba. The OCS then asked him to interpret to the accused the questions he was being asked as the accused was not conversant with Kiswahili language.
21. The accused was asked his name and he replied that he was Daniel Kasila. The OCS then asked the accused what transpired on the material day and the accused said that he was at his place of work planting trees when his boss (the deceased) came and started to quarrel with him. At this point, the accused counsel objected to the line of questioning and the court upheld his objection on the basis that PW4 could not go into details of facts disclosed, which tend to disclose that the accused person committed the offense.
22. PW4 further disclosed that his role was limited to interpreting questions put to the accused in kikamba and informing the OCS of his reply thereof. The accused looked alright and answered all questions voluntarily though at that time he was in handcuffs and a separate police officer was recording his responses. During this process, the accused was not threatened by the said police officers. Under cross-examination, PW4 confirmed that his role was limited to interpretation and never signed the confession statement.
23. PW5 Kanini Wambua confirmed that the deceased was her sister and on 10.06.2013 was present at Lee Funeral Home to identify her body before the post-mortem was done. The deceased suffered injuries to her fingers and panga inflicted cuts on the back of her head. Dr. Johansen Oduor, who carried out the postmortem determined that her deceased sister died due to excessive loss of blood caused by the injuries sustained.
24. The prosecution was not able to avail other witnesses and their case was marked as closed. Later during the proceedings and after the accused person had testified in defence, the deceased family advocate made an application to reopen the prosecution case so that they could be allowed to produce the death certificate and post-mortem report. This application was not opposed by the accused counsel and/or the ODPP. PW3 was recalled and produced both documents as Exhibits 1 & 2 in support of their case.
25. The accused person, when placed on his defence opted to give sworn evidence. He stated that he was from Mwingi and in 2013 was working in Kimutwa at the home of the deceased's father, one Jasper Nzioka. He confirmed that knew the deceased and had no other relationship with her. The deceased father would assign him duties at his different homes in Kivaani, Kyumvi Kimutwa, and Loresho and he would rotate between the said homes every week. He also knew that the deceased stayed at Kinanie on a parcel of land given to her by her father and within the said farm she had built workers Quarter's. The deceased would regularly come to visit the farm and go back to Nairobi.
26. The deceased father died in 2005 and her elder brother Paul Wambua took over his father's role, would assign him duties, and paid his salary. He had also placed him as the person in charge of all the other workers within the deceased parents' home based at Kimutwa. He would also work for the deceased at Kinanie farm, and his last assignment there was to assist in picking tomatoes, which were ready for harvest. This assignment was done a week and after completing his work, he had gone back to Kimutwa farm where he resided.



27. On the day of the incident, he was not at the said Kaninie farm and had returned to Kimutwa on 07.06.2013 because other tomatoes were not ready for picking. He left behind, Mulei, Mutiso and Musyoka, the other causal workers at the said farm and was not aware of the incident and circumstances leading to the death of Grace Mbenyi Wambua. Later on 27.11.2013, he was arrested in Nakuru where he had gone to visit his Aunty Mwendu. The police officers who had arrested him tortured him and forced him to sign a statement confessing to having killed the deceased, before being taken to Athi River police station, where he was further tortured.
28. The accused further stated that he only came to know of Grace's death upon his arrest and had also seen PW4 at the police station but he was a person not know him. The confession allegedly extracted at the police station was procured through threats made to his life and was unlawfully extracted. He further denied being present on the material day at Kinanie- Athi River and denied killing the deceased.
29. Upon cross-examination, DW1 stated that the last time he saw the deceased was on 07.06.2013 and confirmed knowing her parents and all her other siblings. He had been employed initially by the deceased's father who had passed on and his salary of ksh.10,000/= was being paid by Paul Wambua, the deceased brother. He reiterated that had worked at the deceased farm at Kinanie for two weeks and left on 07.06.2013 for Kimutwa farm.
30. After arriving back at Kimutwa farm, he decided to go to visit his home situated in Kyuso, Mwingi Sub county, and was not informed about Grace's demise. Later on 27.11.2013, he was arrested in Nakuru after calling Paul Wambua to ask for the balance of his money. He had not quarreled with the deceased and when he left her farm, she had given him ksh.3,000/= to cater for his transport back to Kimutwa and she had also handed over some tomatoes for his family's consumption. After that, nobody looked for him. In re-examination, DW1 reiterated that he did not kill the late Grace Mbenye Wambua and did not know about her death until after his arrest in November 2013.

### **C. Parties Submissions.**

31. The accused submitted that the prosecution case was based on poor investigations & insufficient circumstantial evidence that failed to establish his guilt. No single witness saw him murder the deceased and PW1 who was at the farm during the material time could not tell if someone else got into the compound and fatally wounded the deceased, considering that there was a worker who had been fired on the material morning. PW1 had also confirmed that he had not witnessed any adverse relationship between him and the deceased and therefore malice forethought or motive had not been established. Reliance was placed in the case of Hyam vrs DPP (19<sup>th</sup>), Woolmington vrs DPP (1935)(AC), & Miller vrs Minister of Pensions (1947) ALL ER 372, to support this contention.
32. The accused person further submitted that before the court could convict him, the prosecution ought to have established that the circumstantial evidence adduced unerringly points to him person as the perpetrator of the offence and no other person. The circumstantial evidence presented was weak as the accused relationship with the deceased was cordial and he had no reason to harm her. Further, the evidence of PW2 contradicted that of PW1 regarding circumstances under which the deceased met her untimely death. It could therefore not be said that the evidence presented unerringly pointed to his guilt and relying on the same to convict him would lead to a miscarriage of justice.
33. He thus urged the court to find that the prosecution's case had not been proved to the required standard and he ought to be given the benefit of the doubt considering the defence presented. He urged the court to dismiss the prosecution case and set him free. Reliance was placed in the case of Solomon Kirimi Mvukaria Vrs Republic (2014) eKLR and Republic Vrs Kipkering Arap Koskei & Anor 16 EACA 135 to emphasis this proposition.



34. Pursuant to leave granted by this court on 13.07.2022 the victim's family did file submissions and stated that the accused person was the last person seen with the deceased and it was therefore incumbent upon him to give a detailed and compelling explanation on how the deceased met her death. The accused spurned that chance and failed to give any such explanation as to how the deceased met her death and the trial court would therefore be justified in drawing an inference that the accused person killed the deceased. Reliance was placed in the case of Republic vrs Josiah Muthiani Maweu (2020) eKLR, Moses Jua vrs The state (2007) LPELR CA/IL/42/2006 and Stephen Haruan vrs The Attorney General of the Federation (2010) I ILAW/CA/A/86/C/2009.
35. The victim's family further urged this court also to rely on the evidence of PW4 Mbondo Kituku, the interpreter at the police station who confirmed that the accused had confessed to cutting the deceased using his panga but did not foresee that she would succumb to the injuries sustained. The accused confession though challenged as improper was consistent with the evidence adduced and when considered alongside the circumstantial evidence adduced, irresistibly pointed to the fact that the accused had a hand in the death of Grace Wambua. Reliance was placed on the case of Republic vrs Fredrick Ole Leliman and 4 others Criminal Case no. 57 of 2016 where the court found the evidence presented to be consistent with the retracted confession.
36. It was also their further contention that the defence raised by the accused was too evasive and untruthful as he had been positively placed at the scene of the crime and did not call any witness to corroborate his evidence that he was away at Kimutwa when the incident occurred. Reliance was placed in the case of Victor Mwendwa Mulinge vs Republic, Republic vrs GNK (2017) eKLR and Republic vrs Sukha Singh S/O Wazir Singh and others (1939) 6 EACA 145.
37. The victim's family thus urged this court to find that the accused be found guilty of the offence of murder and be sentenced in tandem with the punishment provided for the said offence.
38. The prosecution did not file any submissions in this matter.

### **Analysis and Determination**

39. I have considered the evidence on record. Section 203 of the [Penal Code](#) under which the accused is charged provides that:-
 

Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
40. Arising from the foregoing the ingredients of murder were explained in the case of Roba Galma Wario vs. Republic [2015] eKLR where the court held that:
 

“For the conviction of murder to be sustained, it is imperative to prove that the death of the deceased was caused by the appellant; and that he had the required malice aforethought. Without malice aforethought, the appellant would be guilty of manslaughter, as it would mean the death of the deceased during the brawl was not intentional.”
41. In Republic vs. Mohammed Dadi Kokane & 7 Others [2014] eKLR the elements of the offence of murder were listed by M. Odero, J as follows:-
  1. The fact of the death of the deceased.
  2. The cause of such death.



3. Proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused persons, and lastly
4. Proof that said unlawful act or omission was committed with malice aforethought.

### **Fact and cause of Death**

42. PW1, PW2, and PW3 all confirmed that the deceased sustained deep panga cuts on her hand/fingers shoulder and on her head, while at her farm in Kinanie, within Athi River and as a result died due to excessive bleeding. PW3 and PW5 identified thier sister's body at the mortuary and also confirmed that post-mortem conducted by, Dr Johnsen Oduor established that her death was caused by "head injury and exsanguination due to penetrating force trauma.". Both the death certificate ( No 309505) and post-mortem report were produced into evidence by PW3 as Exhibit (1) and (2) respectively. The accused and his counsel also consented to the same. Fact and cause of death was therefore established.

### **(II) whether the deceased met her death as a result of an unlawful act or omission on the part of the accused person.**

43. In this case, none of the witnesses saw the accused person cut the deceased with a panga. The evidence was largely circumstantial. However, proof in criminal cases can be either by direct or circumstantial evidence. When a witness asserts actual knowledge of a fact, that witness's testimony is direct evidence. On the other hand, evidence of facts and circumstances from which reasonable inferences may be drawn is described as circumstantial evidence.

44. Therefore, where circumstantial evidence meets the legal threshold, it may well be a basis for finding the accused person culpable of the offence charged. In *Neema Mwandoro Ndurya v. R* [2008] eKLR, the Court of Appeal cited with approval the case of *R vs. Taylor Weaver and Donovan* (1928) 21 Cr. App. R 20 where the court stated that:

“Circumstantial evidence is often said to be the best evidence. It is the evidence of surrounding circumstances which by intensified examination is capable of proving a proposition with accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial.”

45. Whereas it is appreciated that a charge may be sustained based on circumstantial evidence the courts have established a certain threshold to be met if a conviction is to be based thereon. In *Sawe –vs- Rep* [2003] KLR 364 the Court of Appeal held.

“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 hypotheses than that of his guilt; Circumstantial evidence can be a basis of a conviction only if there is no other existing circumstances weakening the chain of circumstances relied on; The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution. This burden always remains with the prosecution and never shifts to the accused.”



46. In *Ahamad Abolfathi Mohammed and Another v Republic* [2018] e KLR, the Court of Appeal stated as follows on reliance on circumstantial evidence:

“However, it is a truism that the guilt of an accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in *R v Taylor, Weaver and Donovan* [1928] Cr. App. R 21: -

“It has been said that the evidence against the Applicant is circumstantial. So it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial.”

47. Finally in *Abanga Alias Onyango vs. Rep* CR. A No.32 of 1990 (UR) the Court of Appeal set out the principles to apply to determine whether the circumstantial evidence adduced in a case are sufficient to sustain a conviction. These are:

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests:

- i. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established.
- ii. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- iii. The circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else.”

48. In summation, of the aforesaid case law, it is thus required that before any conviction based on circumstantial evidence is reached, the said evidence adduced must be adequate to prove the case on the required standard of beyond reasonable doubt. In that regard, the court will admit circumstantial evidence if it meets the following criteria;

- a) Evidence that is logically connected to the case.
- b) The evidence must prove or disapprove a fact relevant to the case.
- c) The evidence should be reliable, trustworthy with minimal chance of falsehood.
- d) Its potential to influence a decision should not outweigh the probative value.
- e) The evidence should not be hearsay.

49. Accordingly it would be safe to conclude that circumstantial evidence may include;

- a) Physical evidence, such as fingerprints or DNA, that connects the accused to the crime or scene of crime.



- b) Documentary evidence, for example, documentary records and text messages that support inference of guilt.
  - c) Behavioral evidence includes the accused's actions that point to his guilt or involvement in the crime. Examples include running away after the offence is committed or attempting to destroy incriminating evidence.
50. The Evidence lead herein revealed that it was the accused person who was last seen with the deceased, in her compound where she was savagely attacked using a panga. The doctrine of last seen alive based on circumstantial evidence would apply in this case. The said doctrine prescribes that the person last seen with the deceased before his/her death could be held responsible for his/her death and the accused person was therefore expected to provide any explanation as to what may have occurred that contributed to the said death.
51. In the Nigerian case of *Stephen Haruna v The Attorney-General of The Federation* (2010) 1 iLAW/CA/A/86/C/2009 the Court opined thus:
- “The doctrine of "last seen" means that the law presumes that the person last seen with a deceased bears full responsibility for his death. Thus where an accused person was the last person to be seen in the company of the deceased and circumstantial evidence is overwhelming and leads to no other conclusion, there is no room for acquittal. It is the duty of the appellant to give an explanation relating to how the deceased met her death in such circumstance. In the absence of a satisfactory explanation, a trial court and an appellate court will be justified in drawing the inference that the accused person killed the deceased.”
52. Similarly, in the Indian case of *Ramreddy Rajeshkhanna Reddy & Another v State of Andhra Pradesh*, JT 2006 (4) SC 16 the court held that:
- “Even in the cases where time gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small, that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration.”
53. The above proposition is supported by. Sections 111(1) and 119 of the [Evidence Act](#) both of which provide as follows:
- “ 111.
- (1) When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact, especially within the knowledge of such person is upon him:
- Provided that such burden shall be deemed to be discharged if the court is satisfied by evidence given by the prosecuting, whether in cross-examination or otherwise, that such circumstances or facts exist:
- Provided further that the person accused shall be entitled to be acquitted of the offence with which he is charged if the court is



satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused person in respect of that offence.”

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

54. PW1 in his evidence-in-chief confirmed that the deceased came to supervise the harvesting of tomatoes on her farm for two consecutive days. On the first day, she stayed at the farm until about 8.00 p.m. and also came back the following day in the afternoon to collect the remaining tomatoes and generally supervise other ongoing farming activities. When the deceased arrived at the farm on the second day, (08.06.2012), which was the material day of the incident, he opened the gate to usher her in and closed the said gate with a padlock after she had entered. PW1 further confirmed that the said farm did not have any other exit.
55. Apart from the deceased, the only other person present at the farm on the material day was the accused person, as other employees, including the watchman, had their day off. Upon arrival, the deceased asked him to go call the accused person and after exchanging pleasantries, directed him to go water the maize plantation, while she remained behind to arrange the flowers assisted by the accused person. PW1 noted that the accused person at this time, had a panga which he used for general farm work.
56. After a while, he heard his employer shout for help and dashed to go assist her. when he arrived where she was, he found her lying next to her car and had suffered deep cut wounds on her hand, shoulder, and head. He called PW2 and other neighbors to come assist him evacuate the deceased to the hospital but unfortunately, she died at the scene before they could do so. PW1 confirmed that during this period of the crisis, the accused was nowhere to be seen. After the police came, they organized search parties with other neighbours to look for the accused person within the farm vicinity but were not successful in finding him.
57. They had also walked around the farm compound with the police and noted at a certain point that the chain link fence had been interfered with, with signs of someone having stepped on it to jump over the same. PW3 also testified that the deceased had mentioned to her that she was uncomfortable with the accused person, but did not elaborate on the cause of her discomfort. The accused was never seen again at the said farm or his other workplace at Kimutwa, which was the deceased parent's family home until he was later arrested on 27.11.2013, in Nakuru town.
58. In defense, the accused person vehemently denied having any hand in the murder and stated that he had worked for the deceased father/family for a long time and used to be assigned duty at the family's five different properties, including the Kinanie farm, which had been bequeathed to the deceased by her father. Concerning the material incident, he had worked for the deceased for two weeks and departed for Kimutwa farm on 07.06.2012. Upon arrival at Kimutwa, he proceeded to visit his rural home at Kyuso, within Mwingi sub-county. He was not aware of the incident, which had occurred, and was in Nakuru to visit his Aunty where he was eventually arrested.
59. Based on the evidence adduced, there is no doubt that the evidence of PW1 and PW2 placed the accused person at the scene of the incident and he cannot be heard to allege that he had left the farm on the previous day. He was the last person seen with the deceased and had his panga, which he was using to weed the flowers as directed. The farm compound was fenced and the gate locked, no third party was shown to have accessed the said compound within the short period PW1 had left the accused person



with the deceased. The law required the accused person to give an explanation relating to how the deceased met her death in such circumstances but in this instance, he miserably failed to do so as his evidence consisted of hearsay and was evasive.

60. More poignantly after this incident, the accused person took off and disappeared both from Kinanie farm where the incident occurred and from Kimutwa farm where he resided, cutting off all communication with the family that he had worked for several years until he was arrested about five (5) months later while hiding in Nakuru. His action and demeanor after the murder point to the action of a person who was guilty of committing an offence and was running away from the long arm of the law.
61. From the set of facts presented by the prosecution, coupled with the accused behavior after the murder constitutes circumstances, when logically and cogently considered firmly establishes, and form a chain of evidence that is complete and leads to the inescapable conclusion that within all human probability, the murder which occurred was without doubt committed by the accused.
62. The court safely concludes so and holds that the accused person had a hand in the unlawful death of the deceased.

### **Malice Aforethought**

63. Having found that the prosecution has proved actus reus, the other issue for determination is whether malice aforethought can be inferred from the prosecution evidence presented. The offence of murder is complete when, “malice aforethought” is established. Section 206 of the [Penal Code](#), provides that :
  - “(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
  - (b) Knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
  - (c) An intent to commit a felony;
  - (d) An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”
64. It is sufficient to say that the mental element required by section 206 of the [Penal Code](#) can be equated to broad guidelines set out in the case of Tubere s/o Ochen vs. Republic [1945] 12 EACA 63:

“The weapon in possession of the accused while carrying out the intention, the manner in which it was used to strike the human being whether one off blow or violent multiple blows, the conduct of the accused in fleeing from the scene afterwards, the permanency or dangerous severity of the bodily harm and that cumulatively the death of the deceased must ensue from the bodily harm intentionally inflicted.”
65. In assessing the weight to be given to intention as an element of murder, the relevant circumstances must be considered as to whether the appellant foresaw the real or substantial risk and the consequences of targeting the part of the body that may result in the fatal injuries suffered by the deceased.



66. A similar statement of Law was made in the persuasive authority of *S. vs. Sigwahla* 1967 4 SA 566 in which the court stated:

“The expression intention to kill does not in Law, necessarily require that the accused should have applied his will to compassing the death of the deceased. It is sufficient if the accused subjectively foresaw the possibility of his act causing death and was reckless of such a result. This form of intention is known as a *dolus eventualis* as distinct from *dolus directus*.”

67. In this case, PW1, PW2, and PW3 narrated the extent of injuries suffered by the deceased. The severity of the repeated panga cuts was captured in the post-mortem report produced. The deceased had fingers on her left hand chopped off, deep cuts to her left and right forearms, which were severe and neared amputation, and several deep cuts to her occipital and temporal-parietal area of the head above her ear. As a result, the deceased bled to death at the incident scene before even, she could be rushed to the hospital.

68. From the above analysis, it is clear that the accused did not have any other intention but to inflict grievous harm upon the deceased by his repeated action, of cutting her with a panga. It is my finding that the accused person knew or ought to have known that his action would result in death, and it can be safely inferred not only from the choice of weapon used but also the nature of injuries inflicted on the deceased that the accused person's action was premeditated.

69. In the circumstances I am persuaded beyond reasonable doubt that the prosecution also proved this limb of the presence of malice aforethought on the part of the accused.

70. Accordingly, it is my finding and holding that the prosecution has proved all the ingredients of the information of murder against the subject herein, Grace Mbenyi Wambua beyond reasonable doubt and convicted him accordingly under section 215 of the criminal procedure code.

71. Sentencing will await the filing of a pre-sentence report by the probation and aftercare services department, within the next 21 days.

72. It is so Ordered.

**JUDGMENT READ, SIGNED, AND DELIVERED IN VIRTUALLY COURT AT MARSABIT THIS 21<sup>ST</sup> DAY OF JANUARY 2025.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

**DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 21<sup>ST</sup> DAY OF JANUARY, 2025.**

In the presence of:-

Accused present online from Machakos main prison

No appearance for O.D.P.P

IJabo Court Assistant

