



**Republic v Kirema & 10 others (Criminal Case 18 of 2018)
[2025] KEHC 1013 (KLR) (24 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1013 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL CASE 18 OF 2018
LW GITARI, J
FEBRUARY 24, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

**SILAS MWANGI KIREMA 1ST ACCUSED
MESHACK MUKINDA MAJURA 2ND ACCUSED
JOEL KINOTI MUTHENGI 3RD ACCUSED
LUKE MUTHURI MAKEMBO 4TH ACCUSED
BENARD KIMATHI 5TH ACCUSED
JOHN MUKUNDI MUCENA 6TH ACCUSED
STEPHEN GITONGA MUCENA 7TH ACCUSED
PETER MITIRIA MUCIMI 8TH ACCUSED
TARACIRIA KANGARIA 9TH ACCUSED
ESTHER KARAUKI MUCHUNKU 10TH ACCUSED
DAVID MUTEGI KARIGI 11TH ACCUSED**

JUDGMENT

1. The accused are charged with murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) Cap 63 Laws of Kenya. The particulars are that on 4/09/2017 at around 1000hours in Thwanthaju Sub-location Kathangacini Location within Tharaka North Sub-County jointly with others not before court unlawfully murdered Delina Gacue. This is as per the information dated



1/10/2018 upon being arraigned in court, the accused person denied the charges and a plea of not guilty was entered.

The Prosecution's Case

2. Jevica Kaithi (PW1) she was at her home at Kathangacini on 4/7/2017 when she heard screams and saw two women ahead of her who she did not know. One of them had a baby. She asked them whether they knew what the screams were all about. They suggested that they go there and find out. As they went they found many people who were armed with sticks at a junction next to the home of Mutegi Karigi (11th accused) and some were on his land. There were also some boda boda riders and all the men were armed with sticks. She was able to recognize Mwangi Kirema (1st accused) Mukindia (2nd accused), Kinoti (3rd accused), Kangaria (9th accused), Karauki (10th accused) and Mutegi (11th accused).
3. She saw Mutegi was with the people in his compound who were the 1st accused, Kinoti, Luke Muthuri (4th accused), Kangaria, Karauki & Mutegi. The 1st accused prevented them from going beyond where they were. The 1st accused told them to go to the house of Karigi (11th accused) and see a witch.
4. The PW1 first peeped inside the house and saw Gacue (deceased) and the wife of Mutegi lay on the ground. It was alleged that the deceased had bewitched the wife of Mutegi and that is why she was on the ground. The 4th & 10th accused were outside the house. The deceased was given water in a green jug which she prayed for and gave it to the woman (wife of Mutegi). The deceased came out of the house and was surrounded by the people who started beating her. The deceased was badly beaten and was bleeding. They were using sticks. They then decided that she would be lynched. She was tied on both hands and dragged to the road. Mwenda drained fuel from a boda boda (motor bike) women were ordered to move behind, and men surrounded the deceased.
5. All the accused surrounded the deceased, and the 1st accused poured fuel which was drained from a motor cycle on the deceased. The fuel was poured on the head and spread on her clothes. The 4th accused lit a match and set the deceased alight. The fire was so intense, and the deceased screamed very hard before falling down. Her clothes continued to burn, and the fire was so intense.
6. The Chief went and removed the headscarf and the sweater from deceased using a stick. Those who were lynching her fled when the Chief went to the same. The PW1 also ran away. Later, police summoned her and she went and recorded her statement. She testified that she knew the deceased well as they were members of the same SDA church. In cross-examination, she told the court that what she told the court was true.
7. Rengino Kibuti Thiora (PW2) was at that time the area Chief of Kathangacini Location. He testified that all the accused are from his location and he knew them. The deceased was also from his location. He told the court that on 4/9/2017, he was in his office when he received a call from the area manager Murugara Gachui of Kajuria Sub-Unit. He reported that there was a woman who was tied on the hands and there was allegation that she was a witch and the mob wanted to lynch her. He also reported that the deceased was alleged to have bewitched the wife of Mutegi one Kathii. Pw2 rushed to the scene using a boda boda. He tried to restrain the mob but he was unable to stop them as they alleged she was a witch and he could not stop them.
8. PW2 identified 1st accused Silas Mwangi, & 3rd accused, who is Kinoti Muthengi, Kimathi Mugambi. John Mukindi (6th accused) and Peter Mutiiria 8th accused. The accused were armed with whips. He called the Assistant Chief. The Administration Policemen were restrained from going near. There was an explosion of fire, and members of the public ran in different directions. The deceased was engulfed in fire and was screaming for help. The deceased collapsed. He went and saw that she was burning from



- the clothes she was wearing. He removed the clothes which were still burning which were headscarf. The deceased was screaming for help. PW2 used a stick to remove the remnants of her clothes.
9. PW2 and Njeru helped her and took her to a place where there was soil. The children of the deceased went there and he sent one of them, Peter, to go for clothes to cover her nakedness. PW2 called the OCS Makutano, Inspector Kyalo and Inspector Kimathi of Administration Police. The deceased passed away the following day.
 10. In cross-examination, PW2 told the Court the deceased told her that she was lynched by some people and she could recall Kinoti Muthengi, Kimathi Mugambi and Mukundi Mucena who are among the accused in the dock.
 11. Festus Mwenda Muruki, (PW3) testified that on the material day 4/7/2017 at 7.30am he had been sent to Kathangachini by his father and used a boda boda KMCA 644Y belonging to his father. At the area called nine kilometers he met a crowd of people on the road who were shouting and had sticks or whips. He got surprised as he had not anticipated such an incident. The people were also screaming. The people ran towards him and told him they wanted fuel. He told them he did not have. They beat him up and told him to get out of the boda boda. He ran away for his dear life. They siphoned fuel from the motor cycle.
 12. The witness had mentioned Benard kimathi 5th accused as the person who siphoned fuel from his motor bike. The witness was treated as hostile after he repudiated the statement that he had recorded with the Police.
 13. Peter Githuka (PW3) is the deceased's son. He testified on 4/9/2017 he was called by Gatiria who was at Gatunga and she told him his mother had been lynched at her house at Kathangachini. She rushed there and found that the deceased was lynched near the house of Mutegi which was near his mother's house. He met his mother and saw she was burnt and did not have clothes on. He asked her what happened and she told him she had been lynched by people she knew. The people who lynched her had ran away but she found the assistant chief and two police officers. The deceased told her she was lynched by Mwangi Kirema, Mukundi Majura, Muthuuri Makembo, Kinoti Muthengi, Gitonga Muchena, Kimathi Mugambi, Mugeti Kariti, Kalauki Muthee, Mutiria Musyimi, Kiongo Ndatu, M. Rugongo and Muthiu Njeru. He identified those people in court as 1st accuse, 2nd accused 3rd accused, 4th accused 6th accused, 7th accused, 10th accused and 11th accused. Pw4 testified that the people who lynched her had branded her as witch. She had burns on the head, on the ears, back and legs. Se found her at the gate of Mutegi. He took the deceased to hospital but she died on the way. He took the body to the mortuary. Later he identified the body of the deceased to the doctor who performed the post mortem.
 14. Jacinta Gachoka, (PW5) is a daughter of the deceased. She was informed of the incident and rushed to the scene. She met her mother who was naked and had been lynched. She gave the names of Mwangi Kirema, Njeru Mukindia Mayura, Kamati Mugambi, Kinoti Muthengi, M'rugongo as the people who found her drawing water and hijacked her. They took her to the house of Mutegi and started beating her, bound her and set her on fire. The chief went to the scene. She identified 1st accuse, 2nd accused Mwangi Kirema and Mukindia and Muthuri (3rd accused) as the people who lynched the deceased. They took the deceased to hospital but she was pronounced dead.
 15. Doctor Scolastica Nduta (PW6) was the pathologist at Meu Level 5 hospital and holds a bachelors degree in Medicine and Surgery from Nairobi University, 2003 and a Master's degree in pathology from the same University. She produced the postmortem form on behalf of Doctor Muthoni who is her work mate and she is familiar with her handwriting and signature. The post mortem on the deceased man done on 7/09/2017 at 11:22 a.m. She was female African aged about 69 years old. She had burnt



bruises from thigh to the head. There was smoke in he trachea. She formed the opinion that cause of death was 65% burns. She produced the postmortem form as exhibit 3.

16. PW7 Chief Inspector Charles Kyalo (PW2) testified that he was instructed by the OCS to visit the scene at Kamwethiu Village, Nthaju Location Tharaka North Sub-County. He reached he scene and met the chief, assistant chief and some Administration Policemen. At the scene she found the body of Delina Kaswe and it had injuries. She a sheet coving her body which was wet, an indication that these was an attempt to put off the fire with water. The torn clothes were at the scene. PW7 testified that at the time she arrived at the scene, the deceased was alive and she informed him that she had gone to fetch water early that morning when she was confronted by youths led by the husband of Rose Kathii who is Mutegi (11th accused) and were alleging that she had bewitched Ruth Kathii. The youth demanded that she goes and performs some rituals. The youths escorted her to the house of Mutegi and two ladies Taraciria Kangaria and Esther Karauki (9th & 10th accused) and ordered her to perform the rituals. The deceased prayed for Ruth Kathii but the two ladies said she must be lynched. The deceased said she was able to identify he youth who are 1st, 2nd, 3rd, 4th, 5th, 7th & 8th accused. PW7 then interrogated neighbors like David Gitonga. He secured his attendance but did not testify due to adjournments. He recorded a statement confirming that Ruth Kathii had been sick and claimed that she was bewitched by the deceased. PW7 obtained a card from 11th accused the husband of Ruth Kathii to show she had been attending hospital at Tharaka and she had wounds all over the body but the card did not show the ailment. (He did not produce the card as exhibit).
17. In cross-examination Pw7 testified that when he went to the scene he found the deceased still alive and she mentioned all he accused in the dock as the ones who lynched her and the roles they played. PW7 testified that the eighth accused was not mentioned by the deceased but he was mentioned by a witness Peter Kibuga (PW4). The witness was a son of the deceased. On further cross-examination Pw7 told the court that he did not see any statement where eighth accused was mentioned. He further told the court that the deceased told him what each of the accused persons did apart from the two ladies (9th & 10th) accused who were at the scene and others came on a motor bike. The deceased narrated to him that 1st accused had come on a motor bike carrying jerry cans and blocked the road and was joined by the other accused person. The 9th & 10th accused came in the picture when the deceased was told to perform rituals. Accused 1, 2 & 3, 4, 5, 6 & 7 were present according to the deceased and had sticks which they used to beat the deceased as they led her to the house of Ruth. He testified that 9th & 10th accused are the ones who said that the deceased should be lynched and they were joined by others who were at the scene. The 1st to 7th joined the folly and said that the deceased should be lynched. They lynched the deceased a hundred (100) meters from her home.

The Defence Case

18. After the prosecution closed its case, the court ruled that they had a case to answer and were put on their defence.
19. DW1 Silas Mwangi Kirema told the court that he was not at the scene where the deceased was lynched. He told he court that the evidence was fabricated and he was framed. In cross-examination he told the court that he had no grudge with PW2 who told the court that he was at the scene.
20. DW2 Mishack Mukinda Majura gave unsworn defence and told the court that he went to the market and while there he heard that the deceased had been lynched. He did not go to the scene of the lynching. He told the court that he was not involved.
21. PW3 Joel Kinoti Muthengi gave a sworn defence and told he court that he knows nothing about the death of the deceased as he was not there. He told the court that he heard members of the public talking



- about the death of the deceased. He was arrested and escorted to Makutano Police Station. He told the court that he knew the deceased as she was from his village but he did not know how she met her death. He told the court that PW1 who implicated him could not identify him in court. However, in cross-examination, the statement of PW2 was read out in court and the witness had stated that Muthengi Kinoti and Mukinda Kinyua are the one who went with ropes and tied the deceased. He also admitted that PW2, said she saw him. PW3 & 4 also said they saw him. He said he was surprised at their evidence as he was not there.
22. DW4 Luke Mutuuri Mukembo gave a sworn defence and told the court that he does not know about the death of the deceased. He told the court that he did not know why PW4 & 5 implicated him as to who lit the match to lynch the deceased.
 23. DW5 Benard Kimathi Mugambi gave his defence on oath and told the court that he did not know about the death of the deceased.
 24. DW7 John Mukundi Mucena gave a sworn defence and told the court that he heard about the death of the deceased from the News of the Radio that a woman was lynched. He realized it was a woman she knew as she is grandmother to his wife. Later after one year he was arrested and charged. He told the court that the chief said he should not be released as he (chief) had presided over a land dispute where his father was involved and he objected to the chief's decision to have the family of Julius Mucena evicted. This dispute was in 2011 which was long before the deceased was lynched. He told the court that PW2, the chief mentioned him because they had a grudge over land. He told the court that 7th accused, is his brother and 2nd accused is his nephew.
 25. DW7 Gitonga Mucena gave his defence on oath and testified that he did not kill the deceased and had nothing to do with his death. He told the court that he heard from some members of the public that somebody lynched. He was later arrested. He told the court that he did not know why the PW4 implicated him.
 26. DW8, Peter Musyimi gave his defence on oath. He told the court that he was going to Kathangacini on 4/7/2017 when the deceased was lynched. He went to Gatunga on 30/8/2017. On 4/9/2017 he was at Gatunga with his brothers and sisters. On 6/7/2017 he went to Kathangacini and that is when he heard that the deceased was lynched. He told the court that the deceased was his good neighbor and they had not disagreed. He told the court that PW4 did not tell the truth. He told the court that PW4 had told him to go and record a statement and he refused. He (PW4) wanted him to record a statement on how his mother was killed. He told the court that the Chief implicated him over illicit brew. He however, admitted during cross-examination that the chief had never arrested him over illicit brews.
 27. Taracira Kangaria (PW9) gave unsworn defence and told the court that she knew nothing about the charge and that she does not know the deceased. That on the day she was lynched she was at home and she was sick as she is diabetic.
 28. Ester Kariuki DW 10 gave unsworn defence and told the court she was not there when the deceased was killed as she was in hospital where she was admitted in hospital with a sick child. That the deceased was her neighbor and she had no grudge with her.
 29. David Mutegi Karigi (DW10) gave unsworn defence and told the court that he does not know the deceased. That he was not at home. That the deceased was lynched at the road and not in somebody's home. The defence closed its case. The counsel of the accused filed submissions which were expunged from the record. No submissions were filed by the counsel for the eighth (8th) accused. The prosecution filed submissions which I have considered.



Analysis And Determination

30. I have considered the evidence adduced. I have also considered the defence of the accused persons and the submissions by the state counsel Mr. Ketoo. The issue which arises for determination is whether the accused person jointly caused the death of the deceased with malice afterthought. The accused are charged with murder. Section 203 of 2014 of the Penal Code provides as follows:

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”

Article 26 of the Constitution provides that a person shall not be deprived of life intentionally except to the extent authorized by the Constitution or written law. It is the provision for right to life.

31. The prosecution had the duty to prove the charge against the accused beyond any reasonable doubts. For a charge of murder to prove, the prosecution has the burden to prove the ingredients of the offence of murder which include:

- a. The death of the deceased and the cause of that death.
- b. The accused committed the unlawful act.
- c. That the accused committed the offence with malice aforethought.

32. The court of Appeal in the case of Anthony Ndegwa Ngari -vs- Republic (2014) eKLR, held that

“For the offence of murder to be proved, there are three elements which the prosecution must prove beyond any reasonable doubts in order to secure a conviction. They are:

- a. The death of deceased and the cause of that death.
- b. that the accused committed the unlawful act which caused the death of the deceased and
- c. That the accused had the malice aforethought”

33. This was also stated in the case of Republic -vs- W.O.D (2020) eKLR which quoted the case of Anthony Ndegwa Ngari -vs- Republic (Supra).

The first element requires the state to prove the death of the deceased and the cause. The fact of death and its cause is supposed to be proved by medical evidence from a pathologist or doctor. In this case the prosecution relied on the testimony of Doctor Scholastica Nduta Kimani PW6 who produced the postmortem form as exhibit 3 who testified that the cause of death was 65% burns.

34. On the element of the unlawful act which caused the death of the deceased, the duty placed on the prosecution is to prove that the accused were linked to the death of the deceased. The prosecution relied on direct evidence of witnesses who were at the scene and identified the perpetrators of the crime. The star witness was Angerica Kamwara (Pw1) who placed 1st accused Silas Mwangi Kirema (1st accused) at the scene of the crime with others. He narrated how the 1st accused and others were at the scene armed with sticks and blocked their way. PW1 was forced to enter the homestead where she saw the deceased, 9th accused and 10th accused and they suggested that the deceased be burnt as she was a witch. She (Pw1) further testified that 2nd and 3rd accused went to the scene and tied he deceased with ropes



then escorted her to the main road where they assaulted her with sticks. The 1st accused poured petrol which was siphoned from a motor bike and set her alight. PW1 testified that the deceased was doused with petrol from head to toe such that all her clothes became wet. PW1 testified that 4th accused took a match box and torched the deceased leading to a great explosion and the deceased being burnt by the fire. PW1 testified 1st, 2nd, 3rd, 4th, 9th, 10th, and 11th are the ones who were beating the deceased and finally set her on fire.

35. I got the impression that Pw1 was truthful and this court finds no reason to doubt her credibility. This witness (PW1) was present at the scene. The accused person are people she knew very well before the incident. This is a fact which is not in dispute. She also knew the deceased. The offence was committed in broad day light. She therefore could not fail to recognize people she knew. There was no impediment to positive identification of the person who were perpetrating the offence in broad daylight by PW1. She told the court that the accused were at the compound of Mutegi, 11th Accused who was with people at his compound. PW1 testified that 1st accused told the people not to go beyond where he was and told PW1 to go and see a witch. Those who were beating the deceased and finally lynched her were, according to PW1, alleging that she had bewitched the wife of Mutegi. PW1 also testified that 9th & 10th were the women who were at the scene. I find that the testimony of Pw1 was truthful and proves that the accused who she has identified were present at the scene, not as spectators but as perpetrators of the unlawful act of murder.
36. Pw2 the area Chief who was sent to the scene, corroborated the testimony of PW1 that the incident took place at the home of the Mutegi, 11th accused and the deceased was alleged to have bewitched his wife. The deceased had been tied with ropes. PW2 identified the 1st, 3rd, 5th, 6th, 8th, as those who were at the frontline and urging him to keep off. He suddenly heard an explosion and saw a ball of fire and people running in different directions.
37. Pw3 was treated as a hostile although she had implicated the accused in the offence. PW5 testified that she found that her mother had been lynched and she was at the scene naked. According to her, the deceased gave her the names of those who lynched her who are the accused in this case. This was also stated by PW4 & PW7 who gave the names of the accused which they were given by the deceased. The accused gave dying declarations. It has been held that dying declarations is evidence that is weak for the reason that the deceased's evidence is not challenged as she is just that, dead. However, the dying declarations can be relied on to support a conviction if they are proved to have been made by the deceased and they are corroborated with other independent evidence to prove their truthfulness.
38. In R -vs- Eligu s/o Odel & Another (1943) 10 EACA 90
- “it was held that whilst corroboration of a statement as to the cause of death made before his death by the deceased is desirable, it is not always necessary to support a conviction. To say so would be to place such evidence on the same place as accomplice evidence and that would be incorrect... A dying declaration is a statement made by a person who believes they are about to die, detailing the circumstances surrounding their impending death.”
39. Section 33 of the *Evidence Act* (Cap 80 Laws of Kenya) provides as follows:
- “Statements, written or oral, of admissible facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot be procured, or whose attendance cannot be procured without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable, are themselves admissible in the following cases–



- (a) when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question and such statements are admissible whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question;
- (b) when the statement was made by such person in the ordinary course of business, and in particular when it consists of an entry or memorandum made by him in books or records kept in the ordinary course of business or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce, written or signed by him, or of the date of a letter or other document usually dated, written or signed by him;
- (c) when the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages;
- (d) when the statement gives the opinion of any such person as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen;
- (e) when the statement relates to the existence of any relationship by blood, marriage, or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised;
- (f) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised;
- (g) when the statement is contained in any deed or other document which relates to any such transaction as is mentioned in section 13 (a);
- (h) when the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.”

40. The principles governing dying declarations were considered at length in the case of Philip Nzaka Watu -vs- Republic (2016) eKLR the court of Appeal stated as follows:

“Under Section 33(a) of the *Evidence Act*, a dying declaration is admissible in evidence as an exception to the rule against hearsay evidence...”



Such statements are admissible whether the person who made them was or was not expecting death when he made the statements. Clearly by reason of Section 33(a), there is no substance in the claim that dying declaration constitutes in admissible hearsay evidence.

41. Notwithstanding Section 33(a) of the *Evidence Act*, courts have consistently held the view that evidence of a dying declaration must be admitted with caution because firstly, it is not subject to the test of cross-examination and secondly, circumstances leading to the death of the deceased such as acts of violence may have occasioned this confession and suppose so as to render his perception questionable while it is not a rule of law that a dying declaration must be corroborated to find a conviction, nevertheless the trial court must proceed with caution and to get the necessary assurance that a conviction founded on a dying declaration is indeed safe.
42. See also Charles Njonjo Gituro -vs- Republic, Court of Appeal (2019) eKLR. Choge -vs- Republic (1985) KLR. In this case the deceased was accosted by some of the accused as she went to fetch water. They led her to the house of deceased where they were joined by others. The deceased had ample time to see the attackers before they finally decided to lynch her. She could not have failed to know the attackers who were well known to her. The witnesses, that is, PW2, Pw4 and PW5 as well as PW7 confirmed that after being rescued, the deceased could talk and gave the names of the attackers. The names she gave were confirmed by eye witnesses who placed them at the scene as perpetrators. The circumstance of the case favour admission of the dying declarations in evidence. All the accused were identified by eye witnesses. The accused were placed at the scene and not only as spectators but as the perpetrators who took part in the execution of the crime. They were implicated by eye witnesses and with dying declarations by the deceased.
43. I have considered the defence it was mainly a mere denial and was based on allegations made at the stage of the defence and on matters which were not put to the witnesses. I find that the defence was a sham. It was also a defence which was unapologetic. I reject the defence. I find that the accused are the ones who caused the death of the deceased through unlawful acts of setting her ablaze on false wild allegations that she was a witch.

44. Malice aforethought

Section 206 of the *Penal Code* provides as follows:

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

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

45. It is hear that the accused had intention to cause the death. This is owing to the fact that they set her ablaze using petrol and they threatened the Chief and APs not to rescue her as she was a witch. The



circumstance of this case shows that there can be no other reason for setting the deceased on fire other than to cause her death. The use fire on her body is a sound act which establish malice aforethought in this case. See Cheskati -vs- Uganda Court of Appeal where the court stated that malice afterthought may be established from such factors as the part of body injured the type of weapon used, if any, type of injury inflicted and subsequent conducted of the accused. See R -vs- Tubere s/o Ochen (1945) 12 EACA 13. I reject the defence.

Conclusion

46. The offence of murder against the accused was proved beyond any reasonable. The verdict is that the accused are guilty as charged and are accordingly convicted.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 24TH DAY OF FEBRUARY 2025

HON. LADY JUSTICE L. GITARI

JUDGE

Read out in open court accused present.

SIGNED

HON. LADY JUSTICE L. GITARI

Ms. Magara:

I did file submissions in the CTS on 24/10/2024.

Court:

The attention of the court was not brought to those submissions because they were supposed to be filed in open court.

Ms. Maaria:

We had not filed submission.

Prosecution:

The court to consider that the life of decease deceased was lost at an early life. The offence is serious. Court to consider a hefty sentence.

Mitigation

Ms. Magara:

I pray that a pre-sentence report by the Probation Officer be filed.

ORDER

The Probation Officer to file a pre-sentence report within 21 days. The accused will henceforth be remanded in custody to await the reports and the sentencing proceedings.

Mention on 18/3/2025

DATED, SIGNED AND DELIVERED AT CHUKA THIS 24TH DAY OF FEBRUARY 2025

HON. LADY JUSTICE L. GITARI

JUDGE

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