



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Nyambura (Criminal Case E018 of 2021)  
[2025] KEHC 5834 (KLR) (12 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5834 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE E018 OF 2021  
SM MOHOCHI, J  
MAY 12, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOHN KIHENJO NYAMBURA ..... ACCUSED**

**JUDGMENT**

**Introduction**

1. The accused, John Kihenjo Nyambura was arrested sometimes around November-December of 2018 and charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The Particulars are that on the on the 7<sup>th</sup> day of March, 2021 at London area, Nakuru West Sub-County within Nakuru County murdered Peter Thiongo.
2. The accused pleaded “not-guilty” to the charges and the prosecution called Four (4) witnesses to establish a prima facie case against the accused. The Court found that the prosecution had established a prima facie case against the accused’s and placed him to his defence. The accused’s elected to give sworn evidence without calling any witnesses.
3. It is not worthy that while the alleged assault took place in a changaa den, no eye witnesses were called to testify and the entire case is anchored on a dying declaration.

**Prosecution’s Case**

4. PW1, Margret Nyameru Wamae resident of Mangu, a cloth seller knew the accused, he used to do small jobs for her in London, fetching water and she had duka. She also knew the deceased Thiongo used to do for her small menial jobs.
5. The witness recalled on 7<sup>th</sup> March, 2021 at 8 p.m. she was at her shop opening and Thiongo came and said she should help him as he had been stabbed on the right side of the chest.



6. Thiongo was heavily bleeding and he stated that, Kihenjo had stabbed him with knife while they were arguing.
7. The witness never saw Kihenjo, she assisted the deceased and took him to a local dispensary and he was referred to PGH and she paid for him 500/= to take him to PGH, on 2<sup>nd</sup> day I was called by the chief and told Thiongo is dead.
8. PW2 Richard Mwangi resident of Kiamunyi and work as a mason and younger brother to the deceased testified of knowing Kihenjo the accused for a long time and they were in mjengo and that he lived Olive Inn.
9. The witness recalled on 7<sup>th</sup> March, 2021 he was at home and it was on Sunday, after 6 p.m. and was called by Mungai and told that Thiongo had been stabbed and was bleeding heavily, he called his brother who was unavailable, he called his brother in law Stephen Wathiongo and asked him to look for Mugo and go to Hilton to intervene for his brother.  
Later Mungai called and told the witness that he had been take to PGH.
10. On the next day the witness went to PGH and he found deceased who told him that they were inebriated and disagreed between Kihenjo - accused and him.
11. That, the accused was agitated and had disagreed with the deceased over a cigarette and he was armed and he drew a knife and stabbed his brother on right side of chest.
12. That he didn't know which Kihenjo that was. Thereafter he went to PGH to his bed and found he had died.
13. He identified the body of the deceased and witnessed the postmortem.
14. PW3 Dr. Titus Ngulungu, pathologist working Nakuru County Teaching and Referral as clinical and forensic pathologist testified that he conducted a postmortem examination at the Nakuru County Teachers and Referral on 15<sup>th</sup> March, 2024 6.03pm a request from DCI Nakuru West.
15. He was given information that deceased was confronted and assaulted by a known person and died while undergoing treatment.
16. Body was identified by 2 persons Richard Mwangi and Stephen Mwangi both brothers of deceased.

Following ExternalThe body of African male 49 years, Height was 188c.m, had no clothing and had been preserved by formaline.

#### General Examination

Blood loss conjectiva, Surgical oezema cut in tissue, Body had blood loss on eyes. There were intravenous needle inserted on patient and fluid (medical intervention)Body had stab wound on front of right shoulder measurement 30 mm.It was professionally stitched, swelling on the root.Body did not have any other external injuries

#### Internal:

17. Respiratory system – hematoma facial compartment blood between muscle fibers. Right side. It was running towards muscles of upper limb.
18. On cardio vascular, right artery was cut on place proximal to root of upper limb. There was sign of shock grain swelling, liver contusion owing to loss of blood.



19. As a result of examination he formed opinion cause of death massive blood loss owing to stab wound due to sharp blade injury front of right shoulder in keeping with homicide.
20. He took samples for analysis signed report on same date he produced the postmortem as Exh.1.
21. PW4 No. 88363 P.C. Geoffrey Kinambuga, the investigating officer testified recalling very well on 9<sup>th</sup> March, 2021 at 11a.m. while in the office he was informed by C. I. Musila that there was a case reported at Kiamunyi Police Post that he should take it over. It was an assault where someone had been stabbed and taken to PGH and he had succumbed and died and it was now a murder case to be investigated by DCI.
22. He contacted Kiamunyi Police Post to get OB No. and type of case and was informed on 7<sup>th</sup> March, 2021 at around 6 p.m. it had been reported by PW1 that the deceased had gone to seek help from a kiosk having been stabbed on right hand side of chest, by a knife, he sent his colleague P.C. Bitali to confirm the matter and he indeed came back confirming the incident.
23. He summoned the complainant; his mobile number was on record. As she was an old lady she told him she was planning to come but expressed fear but promised to come.
24. He also was given number of family member of deceased and called PW2 who promised to come from Gilgil.
25. PW1 came to the witness and recorded her statement and she indicated on 7<sup>th</sup> March, 2021 deceased came to her while bleeding and witness referred the deceased to a hospital
26. Deceased said he had been stabbed by “Kihenjo” know to PW1
27. At the clinic deceased was referred to PGH and came back to PW1 who hired motor bike and paid KShs.500 to be taken to PGH.
28. PW2 came and he recorded his statement and informed the witness that he heard of the stabbing of his bother and he was admitted at PGH. He went to PGH and found his brother who was able to talk, that deceased told him that he had been stabbed by somebody called “Kihenjo” after they picked a quarrel at the changaa den and it is when they started fighting and accused withdrew a knife and stabbed him on right side of the chest.
29. As he was investigating, on 11<sup>th</sup> March, 2021 they received report of someone being subjected to mob violence. Police officers from Kimunyi police station proceeded to scene and rescued the person being subjected to violence and he was taken to station.
30. He was being subjected to mob violence for murdering deceased, he proceeded to Kiamunyi Police Station and found accused, collected him he denied stabbing the deceased.
31. That the witness tried to get witnesses who were together with accused, in vain. As he got information that witnesses were fearing for their lives if they become witnesses.
32. He took accused to Court for extend time to conduct further investigations. During the time given he was still unable to get eye-witnesses to record statements.
33. That on 15<sup>th</sup> March, 2021 he filled a postmortem form while accompanied by P.C. John Pinlale and postmortem was conducted that revealed that deceased died due to massive blood lose owing to the stabbing.
34. He took accused to PGH to get a mental assessment and report done by Dr. Clephas Wafula. Escorted him to Kaptebwa and interrogated him.



35. The witness went further to record the accused statement and during interrogation the accused told him that at 9.00a.m. on 7th March, 2021 while he was on his way to take changaa, he found deceased seated along the way and upon greeting deceased asked to accompany him to changaa den and accused accepted.
36. After taking changaa the wife of accused by name Lucy came in and deceased hugged the wife of the accused and touched her breast and the accused requested deceased not to hug wife and quarrel erupted, tried to fight and Lucy separated them.
37. Accused took his wife and proceeded for lunch, and came back to a different changaa den called “corridor” within Hilton area.
38. The accused confirmed he met deceased 2<sup>nd</sup> time but the witness compiled his file and forwarded the same to the ODPP to give directions on whether to charge or not.
39. On 23<sup>rd</sup> March, 2021 an information was prepared to charge accused with offence of murder.
40. He had been supplied with the treatment notes that the deceased was being treated at PGH, document that he placed in duplicate file that went to ODPP. That is how accused was charged.
41. At the close of the prosecution’s case the Court found the accused with a case to answer and he was placed to his defence.
42. The accused elected to tender sworn evidence without calling any witnesses

#### **Accused’s Defence Case**

43. DW1 John Kihenjo Nyambura- the accused a resident of Hilton area Nakuru recalled that on the 7th March, 2021 he worked in the morning, doing his chores, then went to group, left group and went to partake alcohol.
44. It was a self-help group. He went to take alcohol at Soko Mjinga at 10a.m. by himself, until his wife came and called him and said he was required at home. He could not recall the time his wife came.
45. He stood up and while leaving her knocked down alcohol of some patron whom he didn’t know. The man stood up and slapped him hard on the face.
46. Those with him at the counter restrained the attacker and he was asked to pay for the spilt alcohol which he did and left, that he was totally inebriated when he got home. They were 25 people at the place we were drinking.
47. That he left the drinking joint with his wife. Got home but found those who were looking for him had left so he slept.
48. That on Monday the 8<sup>th</sup> March 2021 he proceeded to work until evening and came back home.
49. Tuesday the 8<sup>th</sup> March 2021 in the evening at 7 p.m. a group of 10 people came to his home. He could only identify three people from the crowd.
50. They told me to go with them to explain why he poured alcohol of the patron. They all left as they were saying they had apprehended a killer and village elder asked I be taken to the police.
51. That he was never told why he was being taken to police station and at the station he was accused of murder which he denied. He never knew the victim. He never knew where he had died.



## Accused's Submissions

52. The accused through counsel submitted that, the elements of the offence were not proved beyond reasonable doubt.
53. The accused person has been charged with murder contrary to Section 203 as read together with Section 204 of the Penal code. Section 203 states thus:
- “Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
54. That Justice Kiarie in R v Arnold Ouma Munyekenye [2019] KEHC 6693 (KLR) stated thus on proof of a murder charge:
- “In order to establish the offense of murder, in addition to establishing that the accused caused the fatal blow, the prosecution must prove that an accused person charged with murder had malice aforethought. This is the requisite mens rea for the offence of murder.
55. On malice aforethought. Section 206 of the *Penal Code* provides:
- “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 intention 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.
56. That, from the evidence on record, it is clear that none of the prosecution witnesses saw the accused person stab the deceased. The only evidence linking the accused person to the offense in question is the alleged dying declaration made by the deceased to PW-1 and PW-2 on two separate occasions. PW-1 informed Court that the deceased told her that Kihenjo stabbed him. On cross-examination, she said that, no one heard the deceased tell her about the stabbing including her customers who were at the kibanda.
57. That, PW-2 also informed Court that his brother told him that he was stabbed by a Kihenjo. On cross examination he confirmed that no one heard the deceased tell him about the stabbing.
58. Reference is made to the learned Judges of Appeal in Philip Nzaka Watu v Republic [2016] KECA 696 (KLR) stated thus on admissibility of a dying declaration:
- “Under S. 33(a) of the *Evidence Act*, a dying declaration is admissible in evidence as an exception to the rule against admissibility of hearsay evidence. Under that provision, statements of admissible facts, oral or written, made by a person who is dead are admissible



where the cause of his death is in question and those statements were made by him as to the cause of his death, or as to any of the circumstances of the transaction leading to his death. Such statements are admissible whether the person who made them was or was not expecting death when he made the statements.

Notwithstanding S. 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, the dying declaration 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 him confusion and surprise so as to render his perception questionable. While it is not a rule of law that a dying declaration must be corroborated to found a conviction, nevertheless the trial Court must proceed with caution and get the necessary assurance that a conviction founded on a death declaration is indeed safe."

59. The defense urges the Court to appreciate that PW-2 confirmed that the deceased told him he was drunk when the incident happened. The accused person on the other hand informed the Court that there were a number of people in the drinking den on the date of the alleged assault. It begs the question whether indeed the deceased person's perception was accurate taking into account the fact that he was intoxicated. It is our submission that the 2 witnesses repeatedly mentioned the name Kihenjo, which name cannot be said to belong to only the accused person. The Investigating Officer had a duty to present witnesses who were in the drinking den on the night of the alleged assault so as to conclusively prove beyond all reasonable doubt that the accused person committed the act of stabbing the deceased.
60. That the Court in *Pius Jaunga s/o Akumu v R (1954) 21 EACA 333* held thus on cautionary reception of dying declarations:

"The question of the caution to be exercised in reception of dying declarations and the necessity for their corroboration has been considered by this Court in numerous cases... it is not a rule of law that in order to support a conviction there must be corroboration of a dying declaration and circumstances which go to show that the deceased could not have been mistaken in his identification of the accused. But it is generally speaking, very unsafe to base a conviction solely on the dying declaration of a deceased person made in the absence of the assured and not subject to cross-examination unless there is satisfactory corroboration."

61. The defense humbly submit that none of the witnesses who heard the alleged dying declaration placed the accused person at the scene of the assault, neither did they see the accused person in close proximity to the deceased when the said declaration was made. It is our submission that such a serious aggravated assault which transpired at 6pm must have been witnessed by a number of people, warranting the arrest of the aggressor.
62. The defense further urges the Court to note that, no evidence was presented to show the Court that the deceased was admitted at PGH on the alleged date of assault. The post-mortem produced simply confirms that the deceased was found at PGH on 9th March 2021. None of the witnesses who gave evidence placed the accused person in the same location as the deceased on the date of his death. The accused person testified to Court that he only drunk on Sunday 7<sup>th</sup> March 2021 and he proceeded with his normal routine on Monday and Tuesday until a mob came to his home.
63. The defense submit that the deceased person was intoxicated when he made the declaration of the assault. The Court cannot rule out the possibility that he might have picked a fight with any drunkard at the drinking den. Since it is alleged that the assault weapon was a knife, we urge the Court to note



that the same was not presented as evidence before the Court, neither was the accused person arrested with any murder weapon.

64. On the question of malice aforethought, the prosecution failed to establish that the accused person had intent to cause the death or inflict grievous harm on the deceased. From the evidence of PW-2, he stated that the deceased told him he picked an argument with a Kihenjo who was his friend, and slapped him and that was when the said friend withdrew a knife from his pocket and stabbed him once. We urge the Court to note that the accused person in his sworn evidence confirmed that the deceased was a stranger to him. Could it be that the deceased was talking about a different Kihenjo? That is a question that could have been answered had that least produced a list of the persons in the drinking den on the alleged date of assault.
65. The defense humbly submit that the onus was on the prosecution to prove beyond all reasonable doubt that the accused person committed the offense preferred against him. As far as identification is concerned, only PW-1 alleged that she knew the accused person well however she could not place him at the crime scene or substantively confirm that the deceased was referring to the accused person in his declaration.
66. That in light of the above submission, the defense urges the Court to find that, the elements of the offense preferred have not been proved to the required standard and acquit the accused forthwith.

### **Analysis and Determination**

67. I have considered the evidence presented and the sole question to be determined is whether the prosecution has established its case beyond reasonable doubt. The accused is charged with murder under Section 203 as read with Section 204 of the *Penal Code*.
68. Murder is an offence of specific intention. The prosecution is tasked with the duty to establish that there was a death, the death of the deceased was caused by the accused, actuated by malice and was premeditated.
69. The two sections provide that: -
  - “203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
  204. Any person who is convicted of murder shall be sentenced to death.”
70. There is no dispute of the deceased’s death. This was confirmed by PW3 Dr. Titus Ngulungu, pathologist who conducted and produced the post mortem report EXh1 he formed opinion cause of death massive blood loss owing to stab wound due to sharp blade injury front of right shoulder in keeping with homicide.
71. Further and PW2 to PW4 all confirmed seeing the body of the deceased during the post mortem examination. This element was proved beyond reasonable doubt.
72. The second element to be proved is whether the death of the deceased was caused by an unlawful act or omission. The deceased had serious stab wound on the chest. Such a death is unnatural and the same can thus be attributable to an unlawful act or omission. I am persuaded that the deceased death was as a result of an unlawful act or omission.
73. The third element to be proved is whether the accused committed the unlawful act or omission that caused the death of the deceased. None of the prosecution witnesses actually saw the Accused stab the deceased, they all came to the scene after the fact. The case is therefore based on circumstantial evidence.



74. The Court of Appeal in *Ahamad Abolfathi Mohammed & Sayed Mansour Mousavi v Republic* [2018] KECA 743 (KLR) discussed circumstantial evidence and the tests to be applied before circumstantial evidence can be used to sustain a conviction.

“However, it is altruism 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 as strong a basis for proving the guilt of an accused person just like direct evidence. Way back in 1928 Lord Heward, CJ, stated as follows on circumstantial evidence in *R v. Taylor, Weaver & Donovan* [1928] CR. App. R. 21:

“It has been said that the evidence against applicant is circumstantial. So it is, but circumstantial evidence is very often the best. It is evidence of surrounding circumstances which, by undesigned coincidence is capable of proving a proposition with the accuracy of Mathematics. It is no derogation from evidence to say that is circumstantial.” (See also *Musili Tulo v. Republic* Cr. App. No. 30 of 2013).

Before circumstantial evidence can form the basis of a conviction, however, it must satisfy several conditions, which are designed to ensure that it unerringly points to the accused person, and to no other person, as the perpetrator of the offence. In *Abanga alias Onyango v Republic*, Cr. App No. 32 of 1990 this Court set out the conditions as follows:

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of 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.” (See also *Sawe v. Republic* (supra) and [\*GMI v. Republic, Cr. Ap. No. 308 of 2011\*](#)).

In addition, the prosecution must establish that there are no other co-existing circumstances, which would weaken or destroy the inference of guilt.

75. The take away is that circumstantial evidence has to overwhelmingly point to the guilt of an accused person. It must also rule out any other reasonable speculation other than that of guilt of the accused. Finally, the circumstantial evidence must also exclude co-existing circumstances which would be prone to destroy or diminish such a speculation.
76. In this regard the only circumstantial evidence construct was predicated on a dying declaration and the fact that the defence conceded that the accused had actually gone to the changaa den where he left with his wife. No direct or primary evidence was tendered to fortify and corroborate the circumstantial and dying declaration evidence the burden of proof beyond reasonable doubt is therefore on the state to ensure that sufficient evidence is demonstrated before a guilty verdict can be returned an accused person. The standard is not about suspicions. This is because criminal proceedings end up in loss of



liberty, punishment, thus highly limiting freedoms. As such, Justice Nyakundi expressed himself in *Republic v Daniel Charo Katana* [2021] eKLR as follows;

“It is therefore trite that the state should prove its case so strongly that the evidence leaves the trial Court with the highest degree of certitude based on such evidence. It is to be noted that the concept of reasonable doubt in our criminal justice system is not based upon a sympathy or a whim or prejudice or caprice or sentimentality, jelly fish of a Judge or Magistrate seeking to convict or acquit another human being of the commission of the offence. It is an approach to hold the state to the highest standard of discharging its burden of proof in criminal cases beyond reasonable doubt. It is not a conjecture or a fanciful doubt. It is based on admissible and material evidence to dissuade the trial Court from acquitting an accused person.”

77. The final element to be proved by the prosecution is whether the accused’s had malice aforethought when they killed the deceased. The prosecution never tendered any evidence on malice aforethought.
78. Malice aforethought is in reference to the accused’s intention or criminal liability under Section 206 of the *Penal Code*.
79. Section 206 of the *Penal Code* provides that:

“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.”

80. In considering whether there was malice the Court of Appeal in *Victor Owich Mbogo v Republic* [2020] eKLR cited the case of *R vs Tubere S/O Ochen* [1945] 12 EACA 63 where the Court set out the prerequisites for establishing malice aforethought thus;

“To determine whether malice aforethought has been established to consider the weapon used, the manner in which it is used, the part of the body targeted, the nature of injuries inflicted, the conduct of the accused before, during and after the incident”.

81. Similarly, the Court of Appeal in the case of *Joseph Kimani Njau v R* (2014) eKLR, held as follows:

“Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual subject;

- i) The intention to cause death;



- ii) The intention to cause grievous bodily harm;
- iii) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.

It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed.....”

82. In restating the reasoning in *Victor Owich Mbogo v Republic* (supra) the Court held thus: -

“No doubt malice aforethought was established in the present case when the appellant viciously struck the deceased on his neck and head with a panga thereby severing his spinal cord at the neck. By so doing, he must have known that he would grievously injure the deceased or worse still, kill him. As such, we are indeed satisfied that the circumstances leading to the death of the deceased and the nature of the injuries inflicted by the appellant, conclusively established malice afore thought.”

83. The prosecution’s case is without any eye- witness account, the accused is implicated by virtue of his name, the accused denies ever knowing the deceased or stabbing him. No murder weapon was recovered or tendered in evidence and to this end I am persuaded that the prosecution has not proved beyond reasonable doubt presence of malice aforethought.

84. This Court however notes that in the absence of direct or indirect, primary or secondary evidence implicating the Accused person then such a malice aforethought construct becomes academic. While the deceased might have been murdered, there exists no shred of evidence implicating the accused person.

85. The law on dying declarations in Kenya was laid down in the case of *Pius Jasunga s/o Akumu v R* (1954) 21 EACA 331 which was cited with approval in the case of *Okale v Republic* [1965] EA 556 relied on by the appellants counsel. The case *Okale v R* (supra) was in turn followed in *Aluta v Republic* [1985] KLR 543 where it was held at page 547 paragraphs 5-10 thus:

“In every criminal trial a conviction can only be based on the weight of the actual evidence adduced and it is dangerous and inadvisable for a trial Judge to put forward a theory not canvassed in evidence or in counsels’ speeches. A trial judge should approach the evidence of a dying declaration with necessary circumspection. It is generally speaking very unsafe to base a conviction solely on the dying declaration of a deceased person made in the absence of an accused and not subject to cross-examination, unless there is satisfactory corroboration”.

86. This Court under Section 119 of the *Evidence Act* can make a presumption 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.

87. In this instance the failure to further unpackage in corroboration as to which kihenjo had stabbed the deceased would leave the prosecution’s case with the doubts ousting the guilt of the accused.

88. Based on the evidence presented the doubt manifest is sufficient to any rational person in dissatisfaction that the prosecution proved beyond reasonable doubt that John Kihenjo Nyambura unlawfully caused the death of deceased.



89. I therefore find, that the prosecution has failed to prove the charge of murder beyond reasonable doubt and hereby find the accused not guilty of murder of the deceased herein. In conclusion, I do find that the prosecution has failed to prove the charge of murder against John Kihenjo Nyambura beyond reasonable doubt.

90. John Kihenjo Nyambura is found not guilty of the offence of Murder and consequently I hereby acquit him under Section 215 of the *Criminal Procedure Code*, he shall forthwith, be set free, unless otherwise lawfully held.

It is so ordered

**DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 12<sup>TH</sup> DAY OF MAY 2025.**

.....

**Mohochi S.M.**

**JUDGE**

