



REPUBLIC OF KENYA



**Republic v Mwangi (Criminal Case 87 of 2017)  
[2025] KEHC 11007 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11007 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE 87 OF 2017**

**RB NGETICH, J  
JULY 24, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JACKSON NYAGA MWANGI ..... ACCUSED**

**JUDGMENT**

1. The accused JACKSON NYAGA MWANGI has been charged with 2 counts of the offence of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars in count I is that the accused person on the 21<sup>st</sup> day of June, 2017 at Kasiela Rapid Deployment Unit Camp, in Baringo South Sub- County within Baringo County murdered No.20151515037 APC Gabriel Kungu Njoroge.
2. The particulars in count II are that the accused person on the 21<sup>st</sup> day of June, 2017 at Kasiela Rapid Deployment Unit Camp, in Baringo South Sub- County within Baringo County murdered No.2008116261 APC Francis Kore Ekeno.
3. The accused denied the charges and the matter was set down for full trial where the prosecution summoned a total of 9 witnesses in support of the charge preferred against the accused.

**PROSECUTION EVIDENCE**

4. PW1 No.2006053661 APC Daniel Kyalo Mutuku an Administration Police officer at RDU (Regional Deployment Unit) Kasiela, Baringo South testified that in the year 2017, he worked at Kasiela Baringo South and on the 21<sup>st</sup> June, 2017, at around 9: 00 a.m, he was at his tent charging his phone with his colleagues the deceased Francis Ekeno and Ndungu Njoroge. He said that he shared the tent with Ndungu Njoroge but the deceased Ekeno had gone to visit them. He said he fell asleep and he was awoken by a gunshot on the right buttock and he was taken by his colleagues Kevin Omuga and Chris



- by a land cruiser to Marigat Sub- County Hospital and was later transferred to Nairobi Women's hospital, Nakuru branch, where he was hospitalized for 5 days and discharged. He said that he did not know who shot him and that the accused is his colleague whom they worked with him at Kasiele RDU Camp and that he saw him that day at work and had gone with him in the company of their other colleagues at 10:00a.m, in the morning and returned and he went to the tent.
5. He said that he was treated at Nairobi Women's Nakuru Hospital and issued with P3 Form and that he recorded his statement at Marigat Police station and he said that he did not have the P3 which is at Nairobi.
  6. PW2 No.2007108477APC Alex Njenga Mburu testified that he works at Rapid Deployment Unit at Arabal Office. He said in 2017, he was attached at Kasiela office in Arabal and on the 21<sup>st</sup> June,2017, at about 9:00 p.m, he was on duty being the most senior officer in the section and he took responsibility to inform his colleagues that time to take guard had come. He said that he went around telling his colleagues starting with his tent mate Edward Ireri then went to a tent belonging to the accused APC Jackson Nyaga but he did not find him. He went round and found him at APC Ritho's tent and informed them of their duty time and he then went take over duty in his office and after booking for duty, he went to the guard post and when he met his in-charge Edward Ireri, he heard a gunshot sound and he together Edward entered into a pit (Hedaki) and while there, gunshot went, he heard the voice of his colleague Omuga saying that the gunshots were coming from the camp. He said that as the gunshots went APC Omuga said that it was the accused Nyaga who was shooting and it was at this time that they heard the Armored Personal Carrier start the engine and as the vehicle went towards the place where gunshots were coming from, the gunshots stopped.
  7. He said that he then heard APC Omuga say one of their colleague had been injured and he also heard the voice of Sgt. Nginyai calling for a Land cruiser to take the injured to hospital then heard the sound of the land cruiser going fast out of the camp and after a while, their colleague APC Lopeyok went to the pit and informed them that two of their colleagues APC Ekeno and APC Njoroge had died. He said that they stayed in the pit upto around 9 to 9.30 p.m they inquired and learnt that their colleague Jackson Nyaga was not in the camp.
  8. They learnt that APC Ekeno and PC Njoroge had died and APC Daniel Mutuku had been injured and to Hospital. He said Sgt. Nginyai instructed them to follow the footsteps leading out of the camp and at the same time, they got a report from (Kenya Police Reserve) KPR that they had found foot prints leading to Sienta Moja area and they followed footsteps to trace the accused Jackson Nyaga but did not find him and they went back to the camp and found that the helicopter from Police Service had already taken the bodies of APC Francis Ekeno and APC Njoroge. He said he was working within the same section and that he saw him on the day of the incident when he called him to get on duty and he was not present in the parade after the shooting and he did not know how he was found.
  9. PW3 No.1995050286 Administration Police Senior Sergeant Richard M'ithinya testified that on the 21<sup>st</sup> June,2017, he was at Arabal RDU Camp and in the morning at around 8:00 a.m, while taking breakfast, accused went to ask for permission to attend his mother's wedding and that he looked untidy and he asked accused to be smart and shave his hair and he agreed. He said later on, he went with 11 officers including the accused using a Landcruiser to Mochongoi to buy vegetables but did not find vegetables at Kabarel and they proceeded to Ngurima also known as Kinamba.
  10. He said that he left 6 officers at Kabarel to deal with the issue of wealth declaration forms as he left with 5 officers including the accused and himself to Kinamba to look for vegetables and on reaching Kinamba, he inquired whether any of the officers had any issues and some needed some minutes to do their private shopping and he gave them 30 minutes and agreed that that was enough shopping time.



- He said that he did his shopping and all his officers were back to the vehicle again. That while on the way back to Kabel where he had left other officers, there were some officers whom he had given off to go home and they were coming back who called him and said they were at Mochongoi and since there was poor means of transport, he decided to wait for them at Kabel.
11. While at Kabel, he tried to call Daniel Mutuku but his phone remained unanswered while accused and deceased Francis Ekeno and other officers were already at the back of the vehicle 3 of them. He then requested the deceased Francis Ekeno whether he knew where they could trace the officers and he agreed to go with him to look for them and found them taking soda and Mutuku informed him that his phone was being charged at the center. Pw3 directed them to hurry as it was becoming late and went back to the vehicle and the officers followed him. He said he did not find the accused Nyaga in the vehicle. He said they waited for him and he arrived after a few minutes smartly shaved and he complimented him for being smart and told him that had he been given permission, his mother would have been proud to introduce him as her son and in response the accused appreciated the compliment.
  12. He further stated that at about 6:00 p.m, they started their journey back to Arabel and upon arrival at the camp, each officer went to their respective tent and took their supper and it was calm until 9:00 p.m when he remembered that there was power shortage and decided to go and listen to news at Land cruiser's radio while having his weapon and body armor.
  13. He said at around 9.06 p.m. while listening to the radio, he heard gun shots from a G3 rifle and since he was the only one with AK47 rifle, he thought it was a discharge by one of his officers. He switched off the radio and he heard more shots coming nearby. He said that since it was inside the defence, and he could not think of an enemy infiltrating the camp that way, he took cover first to know exactly where the shots were coming from and at this time, he was near the tent of Mutuku and the deceased driver, Kungu Njoroge.
  14. He further stated that while on the ground, he heard noise as if someone was fatally injured and on hearing the noise, he gained courage to enter the tent and used his mobile phone light to check what was happening and when Daniel Mutuku saw him, he went and informed him that he had been shot and looking around, he found one injured person Ndanay Musa and another driver Kungu dead.
  15. He said that while shouting to Daniel Mutuku, one officer Kiprono heard and went to inquire and he confirmed to him that Ekeno was also dead and platoon commander inspector Alex Biwott joined him and informed driver corporal Kipruto to take Mutuku to hospital.
  16. He said he conducted a roll-call and confirmed that one officer the accused herein Nyaga was missing in the camp. He said Mutuku was taken to Nakuru Women Hospital where he was admitted. He said the Platoon commander communicated the incident to superiors. He said the late Francis Ekeno's body was lying near their plastic tank and that is where he came across spent cartridges and 3 magazines, two of which were from the 20 rounds and one had 2 rounds of ammunition. He concluded that because Nyaga was using the magazine they were from his magazine. He collected the two magazines with 20 rounds each and one magazine with only 2 rounds and said the officer who was using it was Nyaga, the accused herein. He said that he worked with the accused Nyaga for 2 months and he did not have any personal grudge against him as he had already given him permission to assist in the matrimonial of his brother and he gave him one week where he came back.
  17. PW4 APC Ndanayo Musa Tanjeo No.2015086976 testified that he works with RDU at Marsabit and on the 21<sup>st</sup> June,2017, he was working at operations at Arabel RDU at the store and the kitchen. He said at about 9:00p.m, they were in the tent conversing with Njoroge Kungu, Ekeno Francis and Immanuel Tangu and Mutuku Daniel and were using a lamp with battery which they had put at the tip of the tent and that the accused Nyaga went and joined them at the tent and requested the deceased Ekeno



to go out of the tent so that they could talk but Ekeno refused. He said they asked him to go and sleep so that they could talk in the morning but the accused Nyaga insisted and then Njoroge asked him to go and sleep as requested so that he can talk with the deceased Ekeno in the morning. He said the accused Nyaga said that he would go and as he went away and it did not take 3 minutes before they heard the gunshots at close range inside the camp and because of the sound, he could not tell where the gunshot came from and he was left screaming. He said the deceased Ekeno inquired from him why he was shouting and he could see Njoroge had been hit and was dying and it was at this time that he laid on the ground and while on the ground, he heard corporal Kiprono inquiring who had discharged the gun.

18. He stated that Ekeno said that he could not allow Corporal Kiprono to be hit and that he would go out and tell him that Nyaga had shot and killed Njoroge and as he went outside, there was a gunshot outside and later Kiprono went and informed him that Ekeno had been hit. He said that he was in the tent lying on the ground where he laid until Sgt. Richard Ithinyai arrived and while he was searching the tent, he rose him up and they were advised to go and take cover where the person who discharged the gun was. He said he was shocked and informed Sgt. to go into the defensive area where they stayed until morning. He stated that in the defensive cover, each tent has a defensive area in the event of an attack and he was in the defensive area when he heard him saying that it was Nyaga who discharged. He said that he did not see Nyaga discharge the gun as he was in the tent and did not know what the matter was. He said that Nyaga is his colleague in the same RDU and who was at a tent nearby. He said that he did not have any grudge with Nyaga and they have never crossed in any way and he had against Nyaga since they started at RDU deployment for about 2 months.
19. PW5 No.235546 I.P Mathew Kiprop OCS testified that at the time of this case, he was officer incharge Crime Mochongoi Police station and that he recalls that on the 23<sup>rd</sup> June,2017, at around 1800hours, he received a call from a police reservist Simon Kiplagat from Kerima police reserve who gave information at their camp at Laminyet where he found a suspect who introduced himself as APC Jackson Nyaga and interrogated him. He said the accused was dressed in police uniform and police boots. He identified accused's ID in court.
20. He said upon interrogating the suspect, he took him to Mochongoi Police station and informed their sub-county commander who instructed them to take the accused to Kabarnet police station where he was booked and returned to the police station. He said they were instructed to search for the firearm but he was not present when the firearm was recovered. He said the Rapid Response Unit are the ones who recovered the firearm and that he arrested the accused person while with the Kenya National police Reservists (KPR) and that he did not see the firearm after it was recovered.
21. PW6 Doctor Dorothy Njeru a pathologist working for ministry of Health testified that on the 23<sup>rd</sup> June,2017, she was requested by P.C Mwanzia from Marigat Police station to examine the body of one Francis Kole Ekeno whose body was identified by his brother Marara Peter Sylvia. He testified that at the time of examination, the body was dressed in blood-stained police uniform and on external appearance, there was a gunshot wound that entered the body in the left buttock which was about 7mm diameter and the bullet head was lodged on the right side of the neck. In the internal appearance, there was injury to the heart on the right and on the left, injury to the left lung, injury to the spleen as well as large and the small intestines. She said that examination of the other parts of the body did not show any abnormal features. Upon examination, she formed the opinion that the cause of death was chest and abdominal injuries due to single gunshot. She said a bullet head that was recovered was sent for analysis under custody of P.C Mwanzia. she prepared the report on 23<sup>rd</sup> June,2017 and she produced the same in court as prosecution Exhibit 1.



22. PW6 Doctor Dorothy Njeru was recalled and she testified that on the 23<sup>rd</sup> June, 2017, she was requested by P.C Mwanzia of Marigat Police station to examine the body of Gabriel Kungu Njoroge whose body was identified by Samuel Njoroge Muhika the father. She said that on examination, there were gunshot wounds which entered the body on the left side of the chest and exited on the right front chest. That there was another gunshot that had entered through the right aspect of the forearm. She said that there was another gunshot wound that entered the forearm from the inner aspect and exited through the elbow. That there was associated fracture of the bones of the forearm and internally, there were tears of the liver and spleen and there were tears of the large intestine. That further examination did not show any other abdominal injuries. She formed opinion that the cause of death was chest and abdominal injuries due to gunshots. She prepared a report on the same day of the 23<sup>rd</sup> June, 2017 which she presented as Prosecution Exhibit 2.
23. PW7 No.50917 Zakayo Wawire attached to DCI Manani Sub- County Kisii County at the time of hearing of this case testified that on the 22<sup>nd</sup> June, 2017, he had just arrived at his former station Marigat when then DCIO requested him to investigate a murder incident reported to have taken place at Kasiela RDU Camp. He said he was informed that the two deceased officers were shot by a fellow officer on 21<sup>st</sup> June, 2017 and he was asked to investigate. He said he was given the name of the suspect by the DCI.
24. He visited the scene in company of his colleague and DCIO where they recorded statements at the camp and he learnt that the officers killed were APC Francis Ekeno (deceased) and APC Gabriel Kungu Njoroge (deceased) and Daniel Mutuku was injured by a bullet on the buttocks. He said the two deceased officers had been flown to Nairobi Chiromo mortuary for postmortem but APC Daniel Mutuku had been rushed to Nakuru Hospital for treatment. He said he learnt that the suspect APC Jackson Nyaga Mwangi had fled with his G3 rifle.
25. He said that he recorded statements and mounted search for the suspect and later on the suspect resurfaced and he was arrested by Kenya Police reservists Fredrick Korir Kirui and Joseph, Ruto and Arusei. He said the suspect was taken to their Kasiela RDU camp before they summoned police from Mochongoi who rearrested the suspect and took him to Kabarnet police station and the rifle was later recovered and handed over to him at Marigat Police station. He further stated that at the scene, they recovered 26 spent cartridges and 3 G3 magazines with 2 rounds each of live ammunitions and the 4<sup>th</sup> Magazine was recovered with the G3 rifle. He prepared exhibit memo form during his investigations and on 3<sup>rd</sup> July, 2017, together with his colleague they took exhibits G3 and 4 magazines, 62 rounds of ammunition and spent cartridges to DCI office head office.
26. Mwanzia attended the postmortem Examination and handed over to him 2 postmortem forms and a bullet which was recovered from the body of APC Francis Ekeno during post mortem and from there he went to DCI headquarters and prepared exhibit memo form and handed over to ballistic. He produced the exhibits in court. He said he also visited RDU in Embakasi where he requested for arms movement book which indicated that a G3 rifle was issued to the accused Jackson Nyaga Mwangi and from his investigations, he found that it was the accused who murdered the two deceased persons.
27. PW8 No.230245 Lawrence Nthiwa a firearms examiner currently attached at arms laboratory DCI Headquarters Nairobi and who has done firearm identification for the last 21 years testified that the exhibits submitted in respect to this case were examined by his colleague Alexander Mwandawira and the report is in respect to exhibits submitted by No.57917 P.C Zebedayo Wawire on 3<sup>rd</sup> July, 2017. He said the exhibits were G3 rifle S/N J41816 marked exhibit A, 4 magazines marked B1-B4, 62 Rounds of ammunition marked C1-C62, 26 expended cartridges marked D1-D26, Fire bullet marked E. He said that the rifle was found to be in good general and mechanical condition complete in its component parts and capable of being fired. That it was successfully test fired using 10 rounds of ammunition



picked randomly from C1-C62. He said the spent cartridges were recovered for comparison purposes. That exhibits C1-C62 comprised 62 rounds of ammunition were found to be suitable for use in rifles such as exhibit A and 10 rounds were picked at random from exhibits C1-C62 and successfully test fired in exhibit A. He said that his colleague Mwandawiro formed opinion that Exhibit A and C1-C62 are capable of being fired and that they are firearm and ammunition respectively in terms of [firearms Act](#) cap 114 Laws of Kenya.

28. Further that exhibits B1-B4 are G3 rifle magazines suitable for use with firearm such as Exhibit A and that each has capacity of 20 rounds of ammunitions when fully loaded. That exhibits D1-D26 are 26 expended cartridges and physical examination revealed that the chamber markings are consistent with G3 family of guns and that exhibit D1 and D16 had their primance blown off.
29. He said he carried out comparative microscopic examination of exhibits D1-D26 and found out that exhibits D1-D4, D5, D19 and D25 were fired in one gun. That he also found out that Exhibits D2, D6, D7, D8, D10, D11, D12, D14, D15, D16, D17, D18, D20, D21, D22, D23, D24, D26 were fired in another gun (another G3 rifle) and exhibits D3 and D13 were fired in another gun (a G3) and Exhibit D9 was fired yet in another gun (G3).
30. That he carried out further comparative microscopic exam of cartridges fired in Exhibit A in conjunction with Exhibits D1-D26 out of which he found sufficient matching face markings, ejector markings, firing pin markings which enabled him form an opinion that cartridges in cluster D (D2, D6, D7, D8, D10, D11, D12, D14, D15, D16, D17, D18, D20, D21, D22, D23, D24, D26) were all fired in the rifle serial Number J41816. He also noted that cartridges in cluster C, E, F were fired in another rifle of G3 family. That exhibit E is fired bullet in caliber 7.62mm which formally component part of 7.62mm BY 51mm round of ammunition. That physical exam of Exhibit E revealed that it is slightly damaged which is an indication that it came into contact with hard surface during its flight. However, it bears 4 land engraved areas with a right had twist. That a comparative microscopic examination of Exhibit E in conjunction with tendered bullet fired in exhibit A revealed sufficient matching to enable inform the opinion that Exhibit E was fired in a German G3 rifle serial No. J41816. He compiled and duly signed the report and produced in court as exhibit 10.
31. PW9 CIP Martin Gitonga inchage of RDU standing in for Daniel Kenyali who was in Mbooni forest for Lamu operations and was not available testified that he has worked with Kenyali for 22 years and he recognizes his signature and he is aware that he is the one who issued accused with a firearm in the year 2017 from RDU Amory in Embakassi Nairobi. He said that he was the one in charge but he has several officers under his command and he was specifically issued by Daniel Kenyali. That they were 25 officers issued with firearms to proceed to Baringo or operation on 3<sup>rd</sup> May, 2017. That APC Jackson Mwangi Nyaga was issued with a G3 rifle with 4 magazines with 20 rounds each serial number J41816 and he signed for the firearm and the firearm was not returned. He said that he has a certified copy of the original record showing that the accused Jackson Mwangi Nyaga signed for the firearm and he has the record. He produced the certified copy which was certified by their commander Mr. Lawrence Owino on the 30<sup>th</sup> July, 2024.
32. Upon close of prosecution case, by ruling delivered on the 14<sup>th</sup> October, 2024, the court found that found a prima facie case had been established to warrant accused be placed on his defence.

### **Accused's Defence Case**

33. The accused testified that on the 21<sup>st</sup> June, 2017 at around 7.00a.m, he woke up as usual and took breakfast and later, he requested Pw3 Sgt. M'ithinya to allow him to accompany them and they were to be taken to Nyahururu but they first went to Kabel where they lighted and they went to Kinamba



- shopping centre where he withdrew money from equity agent and send to his wife Kshs.3,000/= and deposited some to his phone and they stayed in Kinamba centre up to around 4 p.m. He said they were 4 officers and Sergeant M'ithinya (Pw3).
34. He said that they went to a joint where they took lunch and after finishing, he requested Pw3 to allow him to go and shave at Kabel. He said while taking lunch, they ordered for alcoholic drinks together with PC Munya, PC Githonga and PC Ekeno after which they went to shave at Kabel and he met 2 officers who were with him in training and they requested them to go with them to Mochongoi Police station and they went to Mochongoi then back to Kabel where he shaved and went to the vehicle but did not find other officers. He went to look for them and found them in a joint drinking and joined them and later Pw3 called them to go back to the camp. He said they were drunk as they went to the camp.
35. He said they reached the camp at around 8 to 9 p.m. and it was dark. He said he went to his tent, removed a jacket and found food on his bed. He further stated that other officers had sent him for shopping and he gave what he had carried to officer called Gitonga and then went to the kitchen to look for a cup to drink water and as he was going back to the tent to eat, he fell down outside his tent because he was drunk and his colleagues asked him to wake up and go to the tent and while going back, he heard gunshots inside their camp and he went outside the tent to a place called Andaki. He said he was armed as each of them in the camp was armed and that while in the andaki (hole/shelter) the shooting continued and he crawled out of the andaki /hole and went to a nearby bush and realized he was in a school called Kasiela. He said he crawled up to there and woke up and at some point, he tried to walk but he fell down then he crawled.
36. He said he woke up early in the morning trying to recall what had happened and went to a hill while looking for his camp but he was confused as what happened. He said he found himself at a place called Lamaywei and that he heard gunshots coming to the hill. He said he raised alarm saying that he was an officer and all of a sudden, he found two men in front of him pointing a gun at him while telling him to raise his hands up and they took the gun then searched him asking if he had another gun. He said they took the money he had and went with the gun uphill where they shot with his gun and went to the direction of the hill. He said he found many Kenya Police Reservists (NPR) and requested for water and they gave him milk and after sometime two land cruiser vehicles arrived and he was handcuffed and taken to Mochongoi police station. He said he was taken to Marigat Police station where he slept and was informed that commanding officer RDU was going to take him to Kabarnet police station. He said he was not aware of any officer who had been shot and while in Mochongoi, he was informed that two officers were shot and one was injured. He said officers from Kasiela RDU camp went to Kabarnet police station and requested the officer in charge to release him to them to be taken Kasiela RDU camp then he was taken to the place where he was arrested Lemaiywa (between a forest and a village) and he was given a G3 riffle.
37. Accused said his colleagues in the camp had also been given G3 riffle and a few had AK47 and at the time of the incident, his firearm was loaded with one magazine and he had not utilized any bullet at the time the gun was taken from him. He said this colleagues who died were Gabriel Kungu and Francis Ekeno and that there were many tents at the camp as they were about 30 officers and some tents had more than 4 officers. He said during the night they would use their phones for lighting since they were not supplied with torches and at the time of shooting, it was around 9p.m, and it was dark and he could not have shot his colleagues in the camp since they were relating well and they were the same colleagues he was dinking with when they went for shopping. He said his colleagues who died were his good friends and they related well including Pw3 who had given them permission to go do shopping. He said that he did not know who shot his colleagues and that he does not know how many firearms



were taken for examination. He said his firearm was taken from him in the forest and that it is not him who handed over to investigating officer. He said he did not know how many bullets had been expended from his firearm at the time it was handed over to the investigations officer.

### **Analysis and Determination**

38. Section 203 of the *Penal Code* defines murder as the unlawful killing of a person with malice aforethought. The prosecution must prove the following ingredients:-
1. The death of a human being;
  2. That the death was caused by an unlawful act or omission of the accused; and
  3. That the accused had malice aforethought.

### **Proof of Death**

39. From the evidence adduced, it is not disputed that the deceased persons died. The postmortem reports prepared by Dr. Vincent Malombe (Exhibits 1 and 2) established that both APC Gabriel Kungu Njoroge and APC Francis Kore Ekeno died as a result of multiple organ injuries due to gunshot wounds. The manner of death in both cases was classified as homicide.
40. This fact is further supported by the testimony of PW1 (CPL Geoffrey Nyongesa), who identified both bodies at Baringo County Referral Hospital mortuary.

### **(ii) Proof that Death was Caused by an Unlawful Act of the Accused**

41. The second issue is whether the death of the two officers was caused by an unlawful act of the accused. According to the testimonies of PW2, PW3, PW4, and PW5, the accused was seen at the camp shortly before and after the incident. PW4 (PC Benson Kipkemboi) testified that while resting inside the tent, he heard the accused and APC Kungu quarrelling. He then heard gunshots shortly after the accused stormed into the tent. Although none of the witnesses saw the actual shooting, they all confirmed the presence of the accused at the camp moments before the shooting.
42. PW4 stated that he saw the accused leaving the tent, followed by more gunshots. He later found the bodies of the deceased within the tent and the compound. The accused had disappeared. PW8, the ballistic expert, confirmed that the bullet cartridges recovered at the scene matched those fired from the G3 rifle assigned to the accused. The accused was later arrested in Kashiela in possession of the same firearm. From the foregoing, forensic evidence links the accused to the fatal shooting.
43. The accused offered an explanation in his defence that he was intoxicated on the material night and could not recall what transpired. However, the court the accused's conduct— immediately after the incident of fleeing the scene, remaining at large for two days, and being found in possession of the murder weapon—points to a consciousness of guilt. His actions were inconsistent with those of an innocent person.
44. The defence of intoxication under Section 13 of the *Penal Code* may only negate intent where the intoxication is involuntary or so extreme that the accused was incapable of forming the necessary intent. In the present case, the accused failed to demonstrate that his intoxication met this threshold. I am therefore satisfied that the accused was capable of forming intent.
45. Although no direct eye witness saw the accused pull the trigger, the circumstantial evidence—including his presence at the scene, the ballistic link to his firearm, his flight from the scene, and his arrest with the murder weapon—forms a chain so complete that it leaves no reasonable doubt as to the



identity of the perpetrator. This court is guided by the principles established in Republic v. Kipkering arap Koskei & Another [1949] 16 EACA 135, where the court held that circumstantial evidence must point irresistibly to the accused and be incompatible with any other hypothesis.

46. From the foregoing prosecution has met the threshold of proving beyond reasonable doubt that the deaths of APC Gabriel Kungu Njoroge and APC Francis Kore Ekeno were caused by the accused through an unlawful act.

**(iii) Proof of Malice Aforethought**

44. On the question of malice aforethought, Section 206 of the Penal Code provides that malice aforethought shall be deemed established where there is intention to cause the death of or grievous harm to any person. In the instant case, the number and location of the injuries sustained by the deceased officers demonstrate clear intent.
44. The postmortem report for APC Kungu showed injuries to the heart, spleen, and lungs, while APC Ekeno suffered injuries to the liver, spleen, and left kidney. These injuries affected vital organs, indicating that the shots were aimed to cause maximum harm and likely death.
44. The G3 rifle used in the shooting is a lethal weapon, and the discharge of multiple rounds at close range, within a confined area, supports the conclusion that the accused intended to kill. The use of such a weapon in this context meets the threshold of malice aforethought. From the foregoing, I find that the prosecution proved beyond reasonable doubt the three ingredients for the offence of murder in respect to count 1 and II. I proceed to find accused guilty of the two counts of murder and convict him of each count contrary to section 203 as read with section 204 of the penal code.
44. Final Orders: -
- a. The accused is hereby found guilty and convicted of the offence of murder on count I and count II contrary to Section 203 as read with Section 204 of the Penal Code.
  - b. Right of appeal 14 days.

**JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 24<sup>TH</sup> DAY OF JULY, 2025.**

.....  
**RACHEL NGETICH**  
**JUDGE**

In the presence of:  
Mr. Nganga for State.  
Mr. Mongeri for State.  
Accused present.  
CA, Elvis.

