



**Republic v Chasia alias Fundi (Criminal Case E004 of 2023)  
[2025] KEHC 13053 (KLR) (22 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13053 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE E004 OF 2023  
AC BETT, J  
SEPTEMBER 22, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**COSMAS KASIGANI CHASIA ALIAS FUNDI ..... ACCUSED**

**JUDGMENT**

1. The Accused person, Cosmas Kasigani Chasia Alias Fundi is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged that on the 29<sup>th</sup> December 2022 at Manyonyi village within Lugari Sub- County in Kakamega County, he murdered Jane Mbone Kiasia.
2. On 8<sup>th</sup> February 2023 the Accused pleaded not guilty to the charges, and the case was then fixed for hearing. The prosecution called seven (7) witnesses.
3. PW1, Juliet Agiza Abuk testified that on 30<sup>th</sup> December 2022, she was informed by one Freddy that the deceased had been found lying on the floor. Together with her sister Jane, they proceeded to the deceased's house, found the gate shut but not locked, and discovered the deceased lying dead on the veranda. She then informed the village elder and the deceased's son, a Catholic priest. Police officers arrived shortly thereafter and cleared the scene. She assisted the police as they inspected the house and noted that a mattress and three bags of maize were missing. PW1 then recalled that on 25<sup>th</sup> and 26<sup>th</sup> December 2022, the deceased had reported to her that she had found stolen maize and a chisel within her compound, which the deceased suspected belonged to the Accused, who was previously her worker. The deceased had also gone to the Accused's house and recovered three of her stolen chicken with the help of village elders. PW1 confirmed that the Accused in court is the same person the deceased had complained about before her death and identified photographs of the deceased's house, the missing and recovered items, and the body of the deceased, which were marked as MFI 1(a) -1(n). She testified



- that on the morning of 30<sup>th</sup> December 2023, while police were still at the scene, the Accused appeared and was arrested by police to protect him from an angry mob.
4. On cross-examination, PW1 said the deceased's home was fenced about six months before her death and that the gate was usually locked when she was inside. On the day of the incident, she noted the gate had been tampered with as the hinges were broken and the gate forced open. She confirmed that as of 25<sup>th</sup> and 28<sup>th</sup> December 2023, there were about 3½ bags of maize in the house.
  5. PW2, Linus Atsango Shimenga narrated that on 30<sup>th</sup> December 2022 at around 8:00 a.m., he was called by a clan elder concerning an incident at the home of the deceased. On arriving at the scene, he found the deceased lying dead on the veranda floor. Police officers later arrived and collected the body. He testified that previously on 27<sup>th</sup> December 2022, the deceased had approached him and reported that some of her maize had been stolen but later recovered near the gate and inside the bathroom. She also recovered a chisel, which she suspected belonged to the Accused, who had previously worked for her. He testified that later that day, they went to the Accused's home where the deceased identified three of her lost chicken. The Accused claimed to have bought the chicken from Corner Mbaya market but could neither identify the seller nor any witness present during the alleged purchase. He recalled that after further discussions, the Accused agreed to return the chicken to the deceased and also admitted that the chisel belonged to him. The matter was reported to the Chief, but the deceased died before it was resolved.
  6. PW3, Paul Simwa was a Pastor residing in Trans Nzoia. He testified that on 30<sup>th</sup> December 2022, while at Kaplamai Parish, he received a call informing him that his mother had been found dead at her home. He instructed the caller to notify the Chief and then travelled home. On arrival, he found that the body had already been taken away but noticed that the house appeared disturbed. Upon inspection, he confirmed that three bags of maize and a mattress were missing. He later went to the mortuary and confirmed the preservation of the body. He also attended the post-mortem examination at Kimbilio Hospital, which revealed that the cause of death was a dislocated neck and hip. He stated that the deceased lived alone and that he had last visited her on 18<sup>th</sup> December 2021 and knew the Accused who had worked as a fundi (artisan) at their home in November 2021 and still had pending work at the time of the incident. The witness identified photographs showing the deceased's gate, house, the deceased's body, and a bed without a mattress. He also identified a photo of the chicken that had gone missing but were recovered from the Accused's home with the help of village elders about four days before the deceased's death. He mentioned that a neighbour, Juliet, used to assist the deceased, and he occasionally communicated with the deceased via phone. He learned of the Accused's arrest through the police.
  7. According to PW3 who stated in cross-examination that he knew the accused very well as they were related, he knew the Accused as a person of good character, he had also been informed of the Accused's bad character.
  8. PW4 was Kelvis Otwera a resident of Munyuki village. He testified that on 29<sup>th</sup> December 2022, while delivering firewood to his sister-in-law, the Accused approached him and requested to borrow his motorcycle. He gave the motorcycle to the Accused at 4:00 p.m., and the Accused returned it at around 8:00 p.m. Upon returning, the Accused had a bag of maize and requested assistance in finding a buyer so that he could pay the witness for the use of the motorcycle. The witness called a miller named Jack, who came and bought the maize. The bag was measured and found to contain 33 gorogoros of maize, for which the Accused was paid Kshs. 4,290. After the transaction, the Accused asked the witness to drop him at his home, which he did. The witness stated that he did not know where the Accused had obtained the maize but was told by the Accused that he had earned it as payment for work done. The witness identified photographs of his motorcycle marked as MFI 1(i), (j), and (k).



9. Cross-examined by the Accused person's advocate, PW4 confirmed that he had known the Accused as a carpenter for about a year but was neither his friend nor a relative. He stated that he had hired out his motorcycle to the Accused for Kshs. 300 between 4:00 p.m. and 7:00 p.m., noting that the motorcycle had no number plate as it was newly purchased on hire purchase. He clarified that the maize sale transaction occurred at his sister-in-law's butchery and that it was his sister-in-law who called the miller to buy the maize. He delivered the maize to the buyer and gave the proceeds to his sister-in-law. The witness admitted that he was previously arrested and detained for one month and two weeks but was released after some money was paid and upon agreeing to testify as a prosecution witness, for which he was forgiven.
10. PW5, Mulenga Jackson, a posho mill operator at Lumakanda, testified that on 29th December 2022, he was at work when he received a call from Nelson Musomba informing him that there was maize for sale. He proceeded to Nelson's shop, carrying a measure tin and a sack, where he found Nelson, Kelvis, and Kasigami at a butchery. They measured the maize and found it to be 33 tins. He paid for the maize and was promised delivery of an additional 7 tins the following day. After paying, he left for home. The maize was later delivered to his posho mill in a sack via a motorcycle belonging to Kelvis, as shown in photographs marked MFI 1(i) and (j), and the maize itself is depicted in MFI 1(b). On 30th December 2022, he was arrested by DCI officers when the maize was still in his mill and detained until 4<sup>th</sup> January 2023. He stated that at the time of purchase, he did not know where the maize had come from but later learned upon arrest that it had been stolen from the deceased.
11. On cross-examination, PW5 said that it was the first time they had transacted with the Accused.
12. PW6, Nelson Musoma Achaga, a butcher and farmer at Lumakanda, testified that on 29<sup>th</sup> December 2022, he sent Kelvis (PW4) to fetch firewood. Upon returning, he saw Kelvis speak with the Accused who later borrowed Kelvis's motorcycle at around 4:00 p.m. and failed to return by 7:00 p.m. Using the witness's phone, the Accused assured them he was on the way, explaining that he had gone to deliver a bed but did not find the buyer. Later that evening at around 9:00 p.m., the Accused called again and offered to sell them some maize, claiming he had been paid through maize for his work. The witness informed the Accused that he had no money but would help him find a buyer. He contacted PW5 (Mulenga Jackson), who agreed to buy at Ksh. 130 per tin, while the Accused agreed to sell at Ksh. 120 per tin. The Accused brought the maize in a bag to the butchery and later returned with more maize. After measuring, the total was 30 tins, and the transaction proceeded. The witness received payment from PW5 through PW4 and paid the Accused accordingly. On 30<sup>th</sup> December 2022, while at Corner Mbaya, the witness learned from a crowd that the Accused was suspected of killing a woman. He was later summoned by the Chief, arrested and spent about a month in custody. He identified the photographs marked MFI 1(i) and (j) as those showing the motorcycle used by PW4 and given to the Accused on the material day.
13. On cross-examination he testified that he was arrested for having stolen the maize.
14. He further testified that they were asked to pay Ksh. 200,000/= each for which he secured a loan of 50,000/= and gave it to people outside the cell to negotiate for his release whereby he was to give evidence against the Accused.
15. The last witness PW7, was No. 75975 P.C. Joseck Muruli, a police officer attached to DCI Lugari, who testified that on 30<sup>th</sup> December 2022, he was instructed by his station in-charge to proceed to a murder scene at Manyoni village. Upon arrival with other officers, they found the body of the deceased lying on her veranda. Investigations, conducted with assistance from a team from Kakamega, led to the arrest of the Accused at the scene. Three other suspects; Jackton Mategai, Nelson Musoma (PW6), and Kelvis



Otwera (PW4) were also arrested following the recovery of stolen items from the deceased's property. The maize was recovered from Jackton, who disclosed the persons from whom he bought it. Initially, the police recommended that all four be charged with robbery with violence, but on advice from the ODPP, only the Accused was charged with murder, while the other three were turned into prosecution witnesses. The witness confirmed that the deceased had previously reported the theft of her property, including maize, a chisel, and ten chicken, of which three were recovered from the Accused. That matter had been amicably resolved, and the agreement was produced and marked as P. Exh.2 without objection. He also produced in evidence the photographs marked P.MFI 1(a)–(n), a certificate and exhibit memo form (P. Exh.3(a) & (b)). The witness also produced the post-mortem report (P. Exh.4) prepared by Dr. John Wanabisa. The post-mortem established the cause of death as asphyxia secondary to strangulation and cervical spine injury. The Accused, who resided about 2.5 Km from the deceased's home at Corner Mbaya, had previously worked for the deceased as a carpenter. The witness denied claims that the other suspects were released after paying a bribe, stating that their release was based on the ODPP's direction.

16. At the end of the prosecution's case, the Accused was placed on his defence and gave a sworn statement but did not call any witnesses.
17. The Accused testified that on 29<sup>th</sup> December 2022, he worked at the home of Barrack Asiaji in Corner Mbaya Village, where he had been contracted for three weeks. He worked until 6:00 p.m., then went home to Highland, where he spent the night with his wife and three children.
18. The next morning, while heading to work, he met his uncle, Chabuga, who informed him that the deceased, his clan grandmother, had passed away. Upon reaching her homestead, he was barred by police from viewing the body. While outside, crying, he was approached by PW2, the Chief, and police officers, and was subsequently arrested. His house and workshop were searched, but nothing was recovered.
19. The Accused recounted that on 27<sup>th</sup> December 2022, the deceased visited his home but only found his wife. She returned on 28<sup>th</sup> December 2022 with two village elders, including PW2, and questioned him about a stolen chisel allegedly left at her home. He stated that his tools were kept at his worksite. They visited Barrack Asiaji's home to verify this, then returned because the deceased had left her bag behind.
20. At his home, the deceased claimed that some chicken resembled hers. He explained that chicken can look alike, but nonetheless allowed her to pick the ones she identified. She chose 13 chicken, but later agreed, after discussion with the elders and her co-wife Tafrosa Mmbone, to take only 3 chicken, stating she was satisfied and left the remainder for his son's initiation ceremony scheduled for 1st January 2023. The matter was amicably resolved in writing, and he invited her and the elders to the upcoming ceremony.
21. The Accused denied involvement in the deceased's death and maintained that no stolen property or maize was recovered from him. He confirmed knowing PW4, PW5, and PW6 (Kelvis (boda boda rider), Jackton (posho mill operator), and Nelson (butcher) as they were all arrested together and held for over a month. He stated that while PW6 claimed he had called about maize, no call records to support this were produced, despite his phone being seized by the police.
22. He denied ever working for the deceased as a carpenter and insisted he had no dispute with her. The chicken issue had been amicably settled in writing. He also alleged that the Investigating Officer demanded Ksh. 200,000 for his release and that PW4, PW5, and PW6 paid Ksh. 100,000 each to secure their release and become prosecution witnesses.



23. He disowned the chisel shown in court and stated that none of the photographs MFI 1(a)–(n) were taken from his home or workshop. He further stated that he neither owned nor knew how to ride a motorcycle and did not know PW1.
24. During cross-examination, the accused confirmed that the deceased was his grandmother and that PW3 was his uncle. He denied building a chicken pen for the deceased or owning the chisel allegedly recovered from the scene. He maintained that the issue of the chicken was resolved amicably due to his son’s initiation ceremony and not as an admission of theft, claiming he had bought the chicken from an unknown passerby whom he could not trace or call as a witness. He denied selling any maize and expressed confusion as to why PW4, PW5, and PW6 implicated him in the matter. The Accused further stated that he had not visited the deceased for a long time and was unaware of whom she lived with.
25. At the close of the case, the parties were given time to file their submissions.
26. The prosecution in its written submissions submitted that the charge of murder had been proved against the Accused beyond reasonable doubt. Unlawful death was said to have occurred as strangling, killing by asphyxia and cervical spine injury were proved to have occurred, and so all chances of natural or accidental death have been eliminated. The prosecution relied on the doctrine of recent possession, wherein the accused was found possessing the deceased’s maize stolen shortly before her death and could not give a reasonable explanation for such possession. They argued that such circumstantial evidence, when coupled with the Accused’s previous conduct of stealing the deceased’s chicken and attempting to steal maize, irresistibly established his association with the murder. The prosecution further contended that malice aforethought was present, given that the cause of death was strangulation, an act deliberately meant to kill. They pray that the accused be convicted as charged.
27. The defence submitted that the prosecution did not discharge its burden of proof beyond reasonable doubt pursuant to Section 203 of the Penal Code. He submitted that there is no contention that the victim died and that he died from an injury; however, the prosecution has not demonstrated that the Accused had unlawfully caused the death of the deceased. He further submitted that the whole case was founded upon circumstantial evidence, none of which met the legal standard, as the evidence did not place the Accused at the scene nor associate him directly with the commission of the offence. Even the evidence on the chisel supposed to have belonged to the Accused and the maize purported to have been sold are full of discrepancies, encompassing defects of witness credibility on the part of the prosecution, lack of any forensic evidence, with the prosecution failing to even produce DNA or sample test results- which all serves to upset the whole narrative put forth by the prosecution. The Accused further posited that the alleged motive, malice aforethought, and actus reus were also lacking in proof. The Accused advanced that mere suspicion, however strong, cannot constitute a ground upon which a conviction can be sustained and prayed for acquittal.
28. The ingredients of the offence of murder are set out in section 203 of the Penal code which states that: -
  - “ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
29. In Anthony Ndegwa Ngari v. Republic, the Court of Appeal set down the elements of the offence of murder as follows:-
  - a. That the death of the deceased occurred.
  - b. The cause of death.



- c. That the accused committed the unlawful act which caused the death of the deceased.
- d. That the accused had malice aforethought.

#### **Whether the person named as deceased is dead**

- 30. The death of Jane Mbone Kiasia was proved by the production of a post-mortem report. The witnesses testified of finding the deceased outside her house. Before the post-mortem was done, the body was identified by two people that is Juliet Ogisa and Paul Simwa. There was conclusive evidence of death which was not disputed by the Accused.

#### **Whether the death was the result of an unlawful act or omission**

- 31. The second ingredient calls for an interrogation of the evidence to establish whether the death was as a result of an unlawful act. It is well settled that no person should be deprived of his life intentionally except to the extent authorized by *the Constitution*. In *Guzambizi Wesonga v Republic* [1948] EACA 55, the Court of Appeal held that: -

“Every homicide is presumed to be unlawful except circumstances make it excusable or where it has been authorized by law. for a homicide to be excused, it must have been under justifiable circumstances, for example self-defence or in defence of property.”

- 32. Although the fact that the post mortem report was admitted in evidence in absence of its maker, its admission per se, did not automatically give it conclusive evidentiary weight. Section 77 of the *Evidence Act* provides for admission of a document by a person other than its maker.
- 33. Where the court has to rely on expert testimony in order to arrive at a determination, it is imperative that such an expert be availed. As it is, the post-mortem report that was produced leaves the court with pertinent questions. Furthermore, having been produced by a police officer, the Accused did not have any opportunity to cross-examine its maker and interrogate the findings.
- 34. The issue that faces this court is whether the said report has probative value. I have perused the said report. It does not indicate the Doctor’s assessment of approximate time of death. Whereas the report shows that the deceased had a ruptured thyroid cartilage and dislocation to C1 had C2 of the spine leading to the conclusion that the deceased died as result of asphyxia secondary to strangulation as well as cervical spine injury, there is nothing to show how the Doctor concluded that the deceased suffered from asphyxia. There is also nothing to assist the court come to a conclusion that the injuries could only have been caused by assault. The doubts in the court’s mind would have been resolved had the Pathologist or a Doctor conversant with his handwriting produced the report and interpreted it for the court.
- 35. In the absence of an eyewitness to the incident that led to the injuries sustained by the deceased and the Doctor’s evidence would have been crucial in assisting the court. It was impossible to say with certainty how or when the victim died, whether someone manually strangled her, whether a rope or something else was used to strangle her, whether she was hit with a blunt object or whether or not she fell and/or injured her cervical spine due to something else.

#### **Whether or not the death was due to an unlawful act or omission**

- 36. None of the prosecution witnesses were present when the deceased met her death. In essence, the prosecution relied on circumstantial evidence to prove its case. For circumstantial evidence to be used to convict an accused, the sum total of the evidence must unerringly point to the guilt of the



deceased. Such evidence needs to be consistent with the accused person's guilt and inconsistent with his innocence. Mere suspicion only, no matter how strong cannot lead to an inference of guilt. In *Ahamad Abolfathi Mohammed & Another v. Republic* [2018] eKLR, the Court of Appeal considered the weight and nature of circumstantial evidence and held thus:-

“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.

(See *Teper v. R.* [1952] All ER 480 and *Musoke v. R.* [1958] EA 715).

In *Dhalay Singh v Republic*, Cr App. No. 10 of 1997, this Court reiterated this principle as follows:

“For our part, we think that if there be other co-existing circumstances which would weaken or destroy the inference of guilt, then the case has not been proved beyond any reasonable doubt and an accused is entitled to an acquittal.”

37. Flowing from the above, for the circumstantial evidence in this case to result in an inference of guilt, the prosecution needed to adduce evidence that not only connected the Accused to the offence, the said evidence needed to be watertight in that the inculpatory facts must be incompatible with the innocence of the Accused.

38. The basis of the prosecution's case is that the Accused who used to work for the deceased, had previously stolen maize and chicken from the Accused. Indeed, some of the deceased's chicken was recovered from the Accused. It was its further case that the Accused's chisel was found at the deceased's home next to some maize that had been removed from the house. This was narrated by PW1 and was said to have occurred on 25<sup>th</sup> December 2022 before the death of the deceased.

39. For the doctrine of recent possession to apply, it must be proven that the Accused was found with goods that have been positively identified as recently stolen without any reasonable explanation on his part. In *Athuman Salim Athuman v. Republic* [2016] eKLR, the Court of Appeal held thus:-

“...The essence of the doctrine is that when an accused person is found in possession of recently stolen property and is unable to offer any reasonable explanation how he came to be in possession of that property, a presumption of fact arises that he is either the thief or receiver. (See *Malingi V. Republic* (1989) Klr 225 H.c And *Hassan V. Republic* (2005) 2



KLR 151). The circumstances under which the doctrine will apply were considered in Isaac Ng'ang'a Kahiga Alias Peter Ng'ang'a Kahiga V. Republic, Cr. App. No. 272 of 2005, where this Court stated:

“It is trite that before a court of law can rely on the doctrine of recent possession as a basis of conviction in a criminal case, the possession must be positively proved. In other words, there must be positive proof, first that the property was found with the suspect, secondly, that the property is positively the property of the complainant; thirdly that the property was stolen from the complainant and lastly, that the property was recently stolen from the complainant. The proof as to time, as has been stated over and over again, will depend on the easiness with which the stolen property can move from one to the other.”

40. The bag of maize that was produced in court was said to have been recovered from PW5 who claimed that the Accused sold the maize to him. I have analyzed PW's evidence. She did not give any description of the 3 ½ bags of maize that she said she saw on 28<sup>th</sup> December 2022. The maize must have packaged in distinct bags and since she saw them twice shortly before they were alleged to have been stolen, she would have noted the nature of the package. It is noteworthy that she did not expressly identify the bag of maize that was recovered but only said that there were photos of the recovered maize in bags and said to have been sold by the Accused. Maize is a common commodity that is used daily and traded regularly in the markets as it is a staple food within the region. Without a distinct and unique features to identify the maize, one cannot conclusively say that it is the particular maize that had been stolen from the deceased.
41. It is also noteworthy that no evidence was adduced to corroborate PW1's testimony that she had seen 3 ½ bags of maize in the deceased's house on 25<sup>th</sup> December 2022 and 28<sup>th</sup> December 2022 respectively. Coupled with the fact that the Accused is said to have sold only one bag of maize on 29<sup>th</sup> December 2022, there is a clear gap in the prosecution's case that needed to be resolved by further evidence since the transaction occurred at 9.00 p.m. so soon after the murder and yet the other two bags of maize remain unaccounted for.
42. Even if I were to hold that the maize that was recovered was positively identified as belonging to the deceased, it was incumbent on the prosecution to prove that the Accused was the one who sold the maize to PW5 on 29<sup>th</sup> December 2022. The maize was recovered from PW5's posho mill. The motor cycle that was said to have been used by the Accused to ferry the maize belonged to PW4. PW4 alleged that the Accused came back with his motorcycle at 8 p.m. and was looking for someone to buy the bag of maize that he had carried with him. He said that he called PW5 and informed him of the maize. On cross-examination, he said that it was his sister-in-law who called the miller and that after the miller bought the maize, the witness delivered the maize and gave the money to the sister-in-law. The said sister-in-law was not called as a witness. Instead, PW5 testified that it was PW6 who informed him that he had maize to sell. From PW4's testimony, all his dealings were with his sister-in-law, a business lady whom he said operated a butchery.
43. PW6 who testified in court and said that he operated a butchery and was involved in the material transaction is a man. At no point did he allude to a lady being the one who dealt with PW4 at the material time. He said he was the one who sent PW4 for firewood contrary to PW4's evidence that places him only at the point of being called about the maize. The credibility of PW4, PW5 and PW6 was brought to question by PW4's testimony that he was dealing with his sister-in-law who operates a butchery whereas PW6, a male, claimed that he was the one dealing with PW4. The contradiction in the evidence by the said two witnesses disrupted the chain of evidence by the prosecution. At the end of the case, the court has the following questions pending:- Who sent PW4 for firewood? Was PW4



helping his sister-in-law or PW6? Who owned the butchery? Who called the maize miller to buy the maize between PW4 and his sister-in-law? To whom did PW4 hand over the proceeds from the sale of maize? These questions are material and go to the root of the prosecution's case which mainly hinges on PW4's testimony.

44. During cross-examination, it emerged that PW4, PW5 and PW6 had been arrested and kept in custody as suspects in the murder of the deceased. PW6 admitted that he paid Ksh. 50,000/= for his release while PW4 said that some money had been paid for his release. Clearly, the three witnesses had been treated as accomplices with the Accused. Once the investigating officer decided to have the three released and treated as witnesses against the Accused, he ought to have taken steps to seal any gaps in the case.
45. Notably, the Accused's phone was seized by the DCI and was in its custody until time the Accused gave his defence. It would have been prudent for the phone to be subjected to forensic analysis in view of the Accused's defence that he was not involved in the offence. Such analysis would have given conclusive corroboration of PW6's evidence that the Accused was called at about 7 p.m. using his phone and responded that he was on the way, and also his testimony that the Accused called him at about 9 p.m. to ask him if he could buy maize. As it is, the court is left in doubt as to whether or not PW6 ever dealt with the Accused as he alleged because according to PW4, it was his sister-in-law who sent him for firewood, called the miller to come to her butchery to buy the maize, and received the money for the maize from him.
46. The absence of DNA results from the Government Chemist despite PW7 asserting that the samples had been forwarded further weakened the prosecution's case. The samples taken from the Accused and the victim were to confirm whether the Accused was involved in the deceased's murder.
47. In defence, the Accused denied committing the offence and although the prosecution urged the court to infer guilt on the part of the Accused because of his previous history of stealing from the deceased, I hold the view that the Accused's previous conduct cannot by itself, lead to inference of guilt without corroboration.
48. Having said that, I find that the evidence led by the prosecution, taken cumulatively cannot be said to form a chain so complete that there is no escaping the hypothesis that within all human probability, the Accused murdered the deceased. It may be that because of the recent history of theft of the deceased's chicken by the Accused, there is a strong suspicion that the Accused did commit the offence. However, I reiterate that mere suspicion, no matter how strong cannot form a basis for conviction.
49. The upshot is that the Accused is hereby acquitted. He shall be set free forthwith unless otherwise lawfully held.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 22<sup>ND</sup> DAY OF SEPTEMBER 2025.**

**A. C. BETT**

**JUDGE**

In the presence of:

Ms. Chala for the Prosecution

Ms. Eroba

for the Accused

Court Assistant: Polycap

