



REPUBLIC OF KENYA



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**Republic v Ijaka (Criminal Case E028 of 2021)  
[2023] KEHC 17542 (KLR) (22 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17542 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL CASE E028 OF 2021**

**DK KEMEL, J**

**MAY 22, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**BRIAN ISAAC IJAKAA ..... ACCUSED**

**JUDGMENT**

1. The accused herein Brian Isaac Ijaka was charged with the offence of murder contrary to sections 203 as read with section 204 of the *Penal Code*. It is alleged that on the 25<sup>th</sup> July, 2021 at Tamulega Village, Tamulega Sub-location, Malakisi location in Bungoma West Sub- county within Bungoma County he murdered Devan Emuruon Osuno.
2. The accused is represented by Mr. Wamalwa Robert whilst the prosecution is represented by Ms. Mukangu.
3. The prosecution in order to sustain a conviction must prove all the ingredients of the offence herein. The elements of the offence as provided for under section 203 as read with section 204 of the Penal Code are:
  - i. That the deceased is dead;
  - ii. That the death was caused unlawfully;
  - iii. That there was malice aforethought; and
  - iv. That the accused directly or indirectly participated in the commission of the alleged offence.
4. The prosecution called a total of eight (8) witnesses in support of its case. PW1 was Derrick Ikoboi Masinde who testified that he is a form four student at Chamasiri Secondary School and that the deceased had been his cousin. He recalled that on 24<sup>th</sup> July, 2021 around midnight while attending a



function at his uncle's home, he was directed to escort some young children to their sleeping quarters. He then went to sleep and at 12.30 AM he was woken up and requested to release his uncle's motor bike to rush someone to the hospital. He refused to hand over the keys and opted drive it himself to his uncle's place where he found someone lying on the ground and whom he recognized as his cousin and who was bleeding from the head as it appeared like he had been assaulted. He rushed him to the Malakisi hospital where the doctor refused to attend to him as he was still drunk so he left him there with Mark and went home. He later learnt that the deceased had passed on. On cross examination, he testified that he could not tell if the deceased took drugs and alcohol and that he did not know the person who killed the deceased.

5. PW2 was Mark Otolong Omusugu, who testified that the deceased had been his friend and that he also knew the accused. He recalled that on 24<sup>th</sup> July, 2021 around 4.00 PM he met the deceased at Tamulega and they proceeded to Malakisi to attend a birthday party for one of their friends and while hanging out at the party with the deceased, PW1 and the accused joined them only for the deceased to demand that the accused should leave the venue as he had stolen a bag from him. A commotion ensued when the deceased slapped the accused. They intervened and separated them and ordered the accused to leave the venue. Later, he heard someone screaming and on checking what the problem was, he saw the accused had raised some object like a stick and hitting the deceased on the head. He tried to grab it from the accused to prevent him from injuring the deceased but he noticed the deceased was already on the ground unconscious and bleeding. On cross-examination, he maintained that he saw the accused clearly at the scene and that he had clung onto him as Apero, the owner of the home, where the incident occurred found the accused at the scene.
6. PW3 was Japhet Ikoboi Emuruon, who testified that on 24<sup>th</sup> July, 2021 he arrived at the home of Moses who hosted the ceremony. It was around 10.00 PM when PW1, PW2 and the deceased joined him and as they had a chat, the accused arrived and decided to join them but that the deceased attempted to fight him. A commotion ensued and that he intervened together with PW1 and PW2, and managed to separate them and ordered the accused to leave as the deceased was alleging that the accused had stolen a bag and clothes from him. He stated that the accused left but later resurfaced from inside a nearby maize plantation and suddenly hit the deceased on the head. It was then dark and he could not tell the weapon used and it could probably be a piece of wood. He stated that the deceased fell down as Mark, PW2, tried to get hold of the accused but he managed to slip away. On cross-examination, he stated that had they held onto the accused then there would be no doubts about the accused's involvement. He maintained that they did recognize the accused as the assailant.
7. PW4 was Moses Apero Omanyi, who testified that on 24<sup>th</sup> July, 2021 he had visitors at his home and on their exit, he decided to go to bed. His wife alerted him that there was noise outside the house. He woke up and went outside to find out what the problem was and he saw PW3 and another holding somebody who had been injured but whom he did not know. He stated that the person was bleeding from the head. He stated that the injured person was rushed to hospital and that he did accompany them. On cross-examination, he stated that he had invited guests to his home and that they left at 6.00 PM. He testified that he had not met the deceased earlier in the day and that he did not witness the incident.
8. PW5 was No. 225254 CPC Bernard Mulupi, who testified that he was the investigating officer herein. He recalled that on 25<sup>th</sup> July, 2021 around 1.00 PM, he was directed by the DCIO to commence investigations over the death of one Devan Emuruon whose body was at Malakisi hospital. He visited the hospital and saw the body of the deceased and noticed a huge cut wound on the head. He also saw bruises on the hand. He later visited the scene of crime in Tamulega Village and on interrogation he established that there had been a dowry ceremony at the home of Moses on 24<sup>th</sup> July, 2017 which extended into the night and that the deceased had been seen at the home of Moses and that PW1,



- PW2 and PW3 confirmed that the accused participated in the ceremony. He stated that some witnesses claimed that the accused hit the deceased with a blunt object. On cross-examination, he stated that he established that the accused was placed at the scene of crime.
9. PW6 was Dr. Charles Sande, who testified that he conducted a post-mortem on 25<sup>th</sup> July, 2021 on the body of the deceased. He established that the body of the deceased was in good nutritional state and that the death had taken place on 25<sup>th</sup> July, 2021. External examination revealed a fracture on the parietal region and that there was a 7cm cut wound on the skull. He stated that blood oozed from his mouth and nose and his left hand had a bruise. According to him, there was a large depression on the skull showing that there was intra cranial fracture of the head. He later opined that the cause of death was severe head injury due to blunt trauma and he proceeded the post mortem report as an exhibit. On cross-examination, he stated that the weapon was a blunt object.
  10. PW7 was Pastor Joseph Wekesa, who testified that on 24<sup>th</sup> July, 2017 he had been invited by one of his congregants Moses Apero Omanyi, (PW4) who had a ceremony concerning dowry negotiations and he produced minutes to confirm the occurrence of the meeting as exhibit No. 3. On cross-examination, he maintained that there was no alcohol at the said home during the said ceremony.
  11. PW8 was Michael PC Ojuma, senior assistant chief of Tamulega sub location, testified that on 21<sup>st</sup> July, 2021 while at the office one Moses Abero came to inform him that they were expecting visitors at his home and that he needed permission to host a function at his home. He stated that he did a letter for him and directed him to ensure that peace was maintained and that the meeting be over by 6.00PM. He produced the letter which he had authored as exhibit No. 2. On cross-examination, he stated that he had not sanctioned the consumption of alcohol and that the deceased had broken the protocol by taking alcohol and entering PW4's compound uninvited.
  12. Thereafter, prosecution closed its case. Vide a ruling dated 4<sup>th</sup> April 2022, this Court found the accused to have a case to answer and placed him on his defence. He exercised his rights under the provisions of section 306 (2) of the *Criminal Procedure Code* and opted to give a sworn testimony and called one witness.
  13. In his sworn testimony, the accused who testified as DW1 told the Court that the charge before this Court false since as on 24<sup>th</sup> July 2021, the date of the incident, he was at home the whole day with his parents and sisters and his cousin, DW2. According to him, at around 8.00 PM while still at his parent's home, he was taking dinner with DW2 and later they retired to his house where he proceeded with his study sessions up to 9.30 PM while DW2 was busy playing with his mobile phone. He told the Court that he later retired to bed sharing the same with his cousin, DW2. It was his testimony that he knew PW2 but they had their differences as he had accused him of trying to snatch his girlfriend and that he was only after fixing him. He told the Court that he did not know PW3 and that his evidence was full of lies. He insisted that he knew PW4 was a school watchman and that he never visited his compound. He told the Court that on 26<sup>th</sup> July 2021, he went to visit his cousin, one Emmanuel at Malaba only to receive a report that the police and the villagers were looking for him. He told the Court that it was his cousin, Emmanuel, that briefed him telling him his father had called him. He learnt that he was a suspect over an incident of murder at the house of PW4. He told the Court that he requested his cousin to escort him to the nearest police station for his own safety and that he never escaped to Uganda.
  14. On cross-examination, he told the Court that he surrendered himself to Malaba police station where he booked a report on 26<sup>th</sup> July 2021, and that he recorded a statement to that effect. According to him, on 25<sup>th</sup> July 2021, he was harvesting maize and that the deceased was well known to him prior to the incident.



- On re-examination, he told the Court that he bore no grudge with the deceased.
15. DW2 was Eric Imani who testified that the accused herein is his cousin and that on 24<sup>th</sup> July 2021 he was at the home of the accused person having travelled there on 23<sup>rd</sup> July 2021. He told the Court that at around 8.00 PM they took dinner together and later he accompanied the accused to his hut where he did some reading while he listened to music on his mobile phone. According to him, they retired to bed at 9.30 PM and that the accused's hut had one bed which they shared and that at no time did he see or hear the accused venture outside at night. He told the Court that the next day they harvested maize and on 26<sup>th</sup> July 2021, the accused informed him that he was heading to Malaba to see a relative. He told the Court that later on in the day, the police in company of members of the public stormed the home of the accused's parents alleging that the accused had been involved in a murder incident. He advised the accused's father to call the relative in Malaba and advise the accused to seek the help of the police for his safety. He testified that the accused never disclosed to him that he had killed somebody and that it was possible that the police mistook the accused for somebody else.
  16. On cross-examination, he told the Court that he maintained that the accused had been mistaken for somebody else and that the accused's father was not a witness in this case and could not vouch on his visit and that he had no bus fare receipt to show that he went to the home of the accused.
  17. On re-examination, he told the Court that he lacked a bus fare receipt as the rider did not grant him one and maintained that his testimony was the truth.
  18. At that juncture, the defence closed its case. Learned counsels were directed to file and exchange their submissions which they duly complied with.
  19. The Prosecution submitted that the death of the deceased occurred unlawfully and that the same was substantiated vide the evidence of PW6 that confirmed that the deceased died from severe head injuries secondary to blunt force trauma. It was submitted that there was malice aforethought as per the evidence of PW2 and PW3 both of whom testified that there was an altercation between the accused and the deceased and that at some point the deceased did attack the accused. Counsel relied on the cases of *Rex vs Tubere s/o Ochen* (1945) 1Z EACA 63, *Eastern Court of Appeal*; *Hyam vs DPP* (1974) A.C.; *Ernest Asami Bwire Abanga alias Onyango vs R* (CACRA No. 32 of 1990)
  20. It was submitted that the accused person was identified by PW2 and PW3 as he was in their company prior to the assault on the deceased and that he was well known to them. Counsel relied on the cases of *Miller vs Minister of Pensions* (1947) 2 All E R 372; *Bakare vs State* (1987) 1 NWLR (PT 52) 579. It was submitted that the eye witnesses were clear and concise on their recollection of what happened that night and that the alibi as availed by the accused was clearly rehearsed and not believable and that all the ingredients to this offence were proved beyond reasonable doubt and urged this Court to convict the accused.
  21. The defence submitted that the Prosecution did not prove its case beyond reasonable doubt as its case was full of contradictions and the witnesses were incredible and which could not be merely cured by section 382 of the *Criminal Procedure Code*. Counsel relied on the case of *Republic vs Patrick Sila Kyule* (2021) eKLR; *Miller vs Minister of Pensions* (1947) 2 All E R 372; *Republic vs Lifchus* (1997) 3SCR 320
  22. It was submitted that this Court cannot rely on the evidence of witnesses who failed to properly identify the accused. Counsel relied on the case of *Maitanyi vs Republic* (1986) eKLR.



23. It was submitted that the Prosecution’s witnesses contradicted themselves. According to counsel, PW4 stated that he did not see PW2 & PW3 in the homestead and even at night PW4 was already asleep. Counsel relied on the case of *Richard Munene vs Republic* (2018) e KLR.
24. It was finally submitted that the evidence of the defence was cogent and corroborated by DW2 and that the accused’s defence of grudge was not rebutted by the prosecution pursuant to section 309 of the Criminal Procedure Code and the case of *Elias Kiamati Njeru vs Director of Public Prosecution* (2015) eKLR. Counsel urged this Court to dismiss this case and discharge the accused un-conditionally.
25. I have considered the evidence presented by both the prosecution and the defence as well as the submissions tendered. In my view, the main issue for determination is whether the prosecution proved the case against the accused to the required standard and which standard has been held to be that of beyond any reasonable doubt.
26. Section 203 of the Penal Code provides that:
- “ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
27. In *Anthony Ndegwa Ngari vs Republic* [2014] eKLR the Court of Appeal sitting in Nyeri held:
- “For the offence of murder, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the accused had the malice aforethought.”
28. In order to succeed and obtain a conviction in a criminal offence, the prosecution must show in the words of the statute under section 107(1) of the *Evidence Act* that the alleged verdict is against the weight of the evidence and other relevant material that the accused committed the offence as charged for any judgement of the court to be obtained in their favour.
29. In the instant case therefore, the question that I must answer is whether the prosecution proved:
- i. That there was the death of the deceased and the cause of the said death.
  - ii. That the death was caused by unlawful acts or omission.
  - iii. That the accused committed the unlawful act which caused the death of the deceased.
  - iv. That the accused had malice afore thought.
  - v. Conclusion/ what orders the court ought to make.

#### **A. The Death of the deceased**

30. On this element, it is not in dispute that the deceased herein died. The death of the deceased was proved by the evidence of PW6 who carried out the postmortem on the deceased’s body and after the examination, reached the conclusion that the cause of death was severe head injury due to blunt trauma. Accordingly, it is my view that the prosecution has satisfied this element beyond reasonable doubt. Also, PW5, the investigating officer, told the Court that he visited Malakisi Hospital where the body of the deceased was lying and he observed a huge cut wound on his head and bruises on the head. In the case of *R v Cheya & another* 1973 EA at pg. 500, it was held inter alia that proof of death in homicide cases is through medical evidence although any other circumstantial evidence is also admissible as to



the cause and death of a person. With the evidence on record, I find there is proof beyond reasonable doubt that Devan Emuruon Osuno is dead. It transpired from the evidence of PW2 and PW3 that they were in company of the deceased and accused during the ceremony at PW4's house and that they witnessed the attack by the accused on the deceased. According to PW2, he saw the accused had raised some object like a stick and he hit the deceased on the head while PW3 testified that he saw the accused emerge from the nearby maize plantation and suddenly hit the deceased on the head but due to the darkness he was not able to tell the weapon used but simply speculated that it could have been a piece of wood. It was the evidence of PW6 that the weapon that caused the severe head injury due to blunt trauma was a blunt object.

## **B. The unlawful cause of death**

31. The actus reus for the offence of murder are such unlawful acts carried over directly or indirectly that cause or hastens the death of the deceased. Section 213 of the Penal Code defines causing death to include acts which are not the immediate or sole cause of death in which the accused may be held responsible for the death of another person. [See also text on Criminal Law by William Musyoka 2nd Edition Law Africa 2016 at (page 304)]. For a case founded on this criminal evidence, the prosecution must show that the accused person executed an unlawful act intended to cause death or grievous harm. It does not matter whether assault was a single act or multiple infliction of bodily harm so long as the death is traceable to the act carried out by the accused. Section 213 of the Penal Code will apply to the facts of the case depending on the circumstances as manifested by the evidence for the prosecution.
32. In the present case, there is evidence of PW2 and PW3 who were at the scene of the crime and witnessed the incident. On the fateful night they coherently described the chronology of events on how the deceased met a homicidal death. Suffice to say that according to PW2 and PW3, on 24<sup>th</sup> July 2021 in the company of the accused and the deceased, while at a dowry ceremony hosted by PW4, the deceased had alleged that the accused had stolen bag and clothes belonging to him and that the deceased had attempted to attack the accused and a scuffle ensued but they were separated only for the accused person to emerge later from a maize plantation and attack the deceased with a weapon. PW6 Dr. Charles Sande who carried out the postmortem confirmed that the deceased sustained multiple injuries to the head. He formed the opinion that the cause of death was due to the blunt trauma inflicted by a blunt object. He stated that blood oozed from the deceased's mouth and nose and his left hand had a bruise. According to him, there was a large depression on the skull showing that there was intra cranial fracture of the head. This evidence goes to demonstrate that the deceased did not die as a result of natural causes or accident. The right to life under Article 26 of *the Constitution* is jealously protected and can only be excused as authorized by the same Constitution or any other written law.
33. The accused raised a defence of alibi stating that at the time of the incident he was with DW2. It is trite law that when an accused person pleads an alibi, the burden of proving the falsity, if at all, of the defence of alibi lies with the prosecution. In the case of *Victor Mwendwa Mulinge vs. R* [2014] eKLR the Court of Appeal while addressing alibi defence stated:

“It is trite law that the burden of proving the falsity, if at all, of an accused's defence of alibi lies on the prosecution; see *Karanja vs. R* [1983] KLR 501 ... this Court held that in a proper case, a trial court may, in testing a defence of alibi and in weighing it with all the other evidence to see if the accused's guilt is established beyond all reasonable doubt, take into account the fact that he had not put forward his defence of alibi at an early stage in the case so that it can be tested by those responsible for investigation and thereby prevent any suggestion that the defence was an afterthought.”



34. In the instant case, i will endeavour to establish whether the prosecution has discharged its onus.
35. PW2, Mark Otolong Omusugu, testified that the deceased had been his friend and that he also knew the accused. He recalled that on 24<sup>th</sup> July, 2021 around 4.00 PM he met the deceased at Tamulega and they proceeded to Malakisi to attend a birthday party for one of the friends and while hanging out at the party with the deceased, PW1 and the accused joined them only for the deceased to demand that the accused should leave the venue as he had stolen a bag from him. A commotion ensued when the deceased slapped the accused. They intervened and separated them and ordered the accused to leave the venue. Later, he heard someone screaming and on checking what the problem was, he saw the accused had raised some object like a stick and hitting the deceased on the head. He tried to grab it from the accused to prevent him from injuring the deceased but he noticed the deceased was already on the ground unconscious and bleeding. On cross-examination, he maintained that he saw the accused clearly at the scene and that he had clung onto him as Aperu, the owner of the home, where the incident occurred found the accused at the scene.
36. PW3, Japhet Ikoboi Emuruon, testified that on 24<sup>th</sup> July, 2021 he arrived at the home of Moses who hosted the ceremony. It was around 10 PM when PW1, PW2 and the deceased joined him and as they had a chat the accused arrived and decided to join them but that the deceased attempted to fight him. A commotion ensued and that he intervened together with PW1 and PW2, and managed to separate them and ordered the accused to leave as the deceased was alleging that the accused had stolen bag and clothes from him. He stated that the accused left but later resurfaced from inside a nearby maize plantation and suddenly hit the deceased on the head. It was dark and he could not tell the weapon used but it could probably be a piece of wood. He stated that the deceased fell down as Mark, PW2, tried to get hold of the accused but he managed to slip away. On cross-examination, he stated that had they held onto the accused then there would be no doubts about the accused's involvement. He maintained that they did recognize the accused as the assailant.
37. The evidence of these witnesses placed the accused at the scene of the offence. In his defence, the accused contended that at the time of the offence he was at his parent's home with DW2 where they had dinner and proceeded to his hut wherein the accused studied and DW2 listened to music on his mobile phone.
38. The Defence did not call any of his parents or the cousin he had gone to visit at Malaba who eventually alerted him of his being wanted for a murder crime. I expected the accused to avail his father and the call logs from the Communication provider indicating proof of communication or even a police officer from the Malaba police station where he had surrendered himself to. This could have bolstered his alibi. However, the said alibi was shattered by the prosecution's witnesses especially those who were at the ceremony at the home of PW4 namely Pw1. Pw2 and Pw3 who witnessed the incident and even attempted to intervene before the accused managed to escape. Thus, the alibi defence cannot possibly be true owing to the evidence of PW2 and PW3 who were present at the scene and witnessed the incident.
39. I therefore find that the prosecution evidence on record displaced the alibi defence of the accused.

### **C. Malice aforethought**

40. In this case, the accused is alleged to have committed murder with malice aforethought. The mens rea for the offence of murder as deduced from the definition on malice aforethought under section 206 of the Penal Code is an intention to cause death or an intention to cause grievous bodily harm. Further, malice aforethought is proved not only when the accused's purpose is to cause death or grievous bodily



harm but when he carries out the killing with the knowledge that his acts or commission will cause death.

41. The formulation of malice aforethought as set forth in section 206 of the Penal Code imports the element of recklessness, design and premeditation. This is where the accused foresees that a particular result would flow from his unlawful acts but proceeds to execute his intention. In *Ogeto v R* [2004] 2KLR 14 the Court of Appeal held inter alia that:

“malice aforethought in murder is proved where the accused chases the deceased and when he catches up with him stabs him with a knife on the chest from which wound he fatally dies. Section 206(a) of the penal Code on the intention to cause death or grievous harm is effectively proved.”
42. There are other numerous cases herein which demonstrate the elements of malice aforethought in the trial of an accused person. Among the relevant authorities applicable to the circumstances of this case are *R v Tubere s/o Ochen* 1945 12 EACA 63. The grounding elements being the nature of the weapons, the manner in which it was used, the relevant parts of the body targeted, the nature and gravity of the injuries inflicted and the conduct of the accused person concerning the manner of killing. The Court of Appeal in the cases of *Ernest Abanu Bwire Abangallas Onyango v R* CR Appeal No. 32 of 1990, *Godfrey Ngotho Mutiso v R* 2008 EALR, *Morris Aluoch v R* CR Appeal No. 47 of 1996 and *R v Yakobo Ojamuko s/o Nambio* 1944 1 EACA 97. The above cases propound the underlying principles that if evidence shows repeated injuries inflicted upon the deceased then malice aforethought could well be manifested as outlined in section 206 of the Penal Code.
43. The prosecution therefore has a duty to prove that the accused with malice aforethought caused the death of the deceased.
44. Reverting to the case before me, the prosecution relied on the testimony of PW6 and the postmortem report to establish that the accused had malice aforethought. PW2 stated in court that before the murder, deceased demanded that the accused should leave the venue as he had stolen a bag from him. A commotion ensued when the deceased slapped the accused. The accused was asked to leave the venue. According to PW3, the accused left but later resurfaced from inside a maize plantation and then he suddenly hit the deceased on the head. It was dark and he could not tell the weapon used but suspected it could probably be a piece of wood. The deceased was murdered after the accused went into the maize plantation armed himself with a piece of wood/stick in retaliation on his being turned away from the home of Pw4 and for being branded a thief by the deceased. These were the reasons which angered the accused and that is why he left and then came back fully prepared to cause maximum grievous harm to the deceased. It is thus clear that the accused had the requisite mens rea (malice aforethought).
45. PW6 Dr. Charles Sande testimony who carried out the postmortem confirmed that the deceased sustained multiple injuries to the head. He formed the opinion that the cause of death was due to the blunt trauma inflicted by a blunt object. He stated that blood oozed from the deceased's mouth and nose and his left hand had a bruise. According to him, there was a large depression on the skull showing that there was intra cranial fracture of the head. Reviewing the evidence in totality at length, I am satisfied that the assault while armed with a dangerous weapon came from the accused. An assault upon the person of another with a deadly weapon, tool, device or in statement no doubt is likely to produce greater bodily harm than a mere fist or cane.
46. The use of the stick/wood by the accused targeting the head of the deceased was only capable of producing death or serious bodily harm. The gravamen of the offence of murder is the use of violent force with an intent to kill or cause grievous harm.



47. As noted from the evidence, the prosecution has discharged the burden of proof of the offence as defined in section 203 of the Penal Code. There was no evidence of the deceased being armed. In attacking the deceased, the accused formed the necessary malice intended to cause death or grievous harm to the deceased.
48. The accused did nothing to preserve life assuming indeed that the deceased was within the vicinity to commit a felony. The gravity of the injuries suffered by the deceased and the unreasonable force used by the accused, the part of the body targeted, and nature of the weapon used connotes malice aforethought as per section 206 of the Penal Code. Even if the deceased had made allegations against the accused and even slapped him, this was no reason for the accused to leave the venue and come back fully armed. The accused was thus out to finish off the deceased as he went and planned on how to kill the deceased. This was the mens rea and hence the accused had the requisite malice aforethought. Had the accused opted for other avenues of redress if he felt offended, then the deceased would be alive today. The fact that the deceased died from the single blow is a clear indication that the accused intended the assault to cause grievous harm leading to the death of the deceased.
49. I accept the evidence adduced by the prosecution witnesses that the attack of the deceased had been perpetrated by the accused herein. The accused's version is that the evidence of PW2 and PW3 was full of lies and with the agenda of fixing him did not cast any doubt about the evidence adduced by the prosecution. The defence of alibi was displaced by the prosecution evidence on record.
50. In view of the foregoing observations, it is my finding that the prosecution proved its case against the accused herein Brian Isaac Ijaka beyond any reasonable doubt. I find the accused herein guilty of the offence of murder contrary to section 203 as read with section 204 of the Penal Code and hereby proceed to convict him accordingly.
51. It is so ordered.

**DATED AND DELIVERED AT BUNGOMA THIS 22ND DAY OF MAY 2023.**

**D. KEMEI**

**JUDGE**

In the presence of :

Brian Ijaka Accused

Wamalwa for Accused

Mukangu for Prosecution

Kizito Court Assistant

