



**Republic v Ndakwa & another (Criminal Case E008 of 2022)  
[2024] KEHC 12023 (KLR) (3 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12023 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CRIMINAL CASE E008 OF 2022  
RPV WENDOH, J  
OCTOBER 3, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**AYUB MAFUVO NDAKWA ..... 1<sup>ST</sup> ACCUSED**

**DAVID WAWERU KURIA ..... 2<sup>ND</sup> ACCUSED**

**JUDGMENT**

1. By the information dated 3/10/2022 the two accused persons, Ayub Mafuvo Ndakwa And David Waweru Kuria were jointly charged with the offence of Murder contrary to section 203 as read with Section 204 of the Penal Code.
2. The particulars of the charge are that on 26/1/2016 at Nyabukarange village in Kuria West, jointly with another not before the court, murdered Daniel Weisiko Moi
3. At the hearing, the prosecution called a total of fourteen (14) witnesses in support of their case. Prosecution Counsel Mr. Mulama, Mr Maatwa and lastly Mr. Kaino. The accused were represented by Mr. Amande Kiseru Advocate.

**The Prosecution case,**

4. PW1 Rael Boke Mwita , The wife to the deceased recalled that on 26/1/2026 about 5.00a.m. while asleep in their house with her husband (deceased) and children, they heard a knock by people who introduced themselves as police. On opening, the two people at the door asked if he was Moi, Moi being the husbands’ nickname; that the two wore police uniforms – jungle, that they were armed with guns and they started beating the husband. She said that it was dark, and that they did not tell him anything as they struck the husband; that he fell and they entered the bedroom, came out and beat the husband again as he cried and was taken out; that one person went where cows are kept, got a



rope and tied the husband's hands at the back; The two called her to open the kitchen door which she did and they entered and thereafter entered the children's house, came out and continued to beat the husband all over the body and told him to go with them but he was not able to get up. They left with the husband and she followed them but they told her to go back. As she went back home, she could hear her husband crying. Next day, at about 3.00p.m. she got information that her husband had died. She could not identify the two people who came to her house assaulted the husband and took him away because of the way they were dressed. Later in cross examination, she admitted that three people went to her house that night.

5. PW2 Chacha Dickson Wandwi recalled that on 26/1/2026, about 4.30a.m. while asleep in his house with his family, he heard dogs barking and going round his home. He feared to go out because it seemed the dogs were being chased; that the door to his house was hit and the latch gave way and people entered without identifying themselves; that the house is two roomed and so he hid under the bed and so did the wife; that six (6) people entered and started flashing their torches; that three people entered the bedroom and asked why the lights which had been on had been switched off; they switched the Solar light on; they removed us from under the bed. He noticed they were police officers wearing jungle uniforms and were armed with big guns; that he was taken to the sitting room, the officer took a metal he had put on the door and hit him with it on the head he was injured which left a scar in the middle of the head (shows scar); they stepped on him, beat him with sticks as he cried asking to be told the reason for the beating; that they beat him till daylight, that they later brought Daniel Moi and Jomo Mwita and continued to beat them together. PW2 said he was able to identify the police officers by appearance and identified the Assistant Chief Zablon. PW2 said that Daniel Moi and Jomo Mwita were taken to his home by four (4) police officers and that the two had their hands tied at the back and had been beaten, were limping and unable to walk. They were pushed on to PW2 and continued to beat them; later we heard gun shots and later police brought two others Lucas Nyangi and Marwa Nyaboganyi who had also been beaten and were crying. The police gathered in his cow shed, talked and took five herd of cattle; that PW2 and Moi could not walk and were helped by some officers to walk to the police vehicle; that Lucas and Marwa who were able to walk remained with the Assistant Chief and were never taken to the police vehicle; that while in the vehicle Moi started crying asking for water, then he died. They were taken to Ikerege Chief's camp in Bukira North and called the Chief who questioned the police why they came for an operation in his area without informing him, that when the Chief saw Moi's dead body, he said he would not record what they wanted; that the Chief disagreed with the police officers and the suspects were taken to Kehancha police station; that the OCS of Kehancha and the police officers argued over taking the arrested people in the police station because one suspect was dead. Later, PW2 and one John were placed in cells but Moi's body was left in the vehicle; that they were taken to hospital at Kehancha. After two days at police station, they were released and were not charged with any offence. He denied that his five cattle had even been returned to him. He identified Accused 2 as one of the officers who beat them.
6. PW3 Lucas Nyangi Chacha, resident of Nyabukarange recalled that on 26/1/2016, was asleep in his house with his family, he was woken up about 3.00 to 4.00 a.m. by somebody calling him to open. He went outside and saw three police officers clad in uniform (jungle) and were with Jomo. They asked his wife for a rope and tied him up. They proceeded to the house of Nyamboganyi, woke him up and when he did not open, fired two gun shots. They asked the mother for the cows that had been brought to that home and she showed them the cows in her house. He was also tied up but they did not take them. PW3 identified the cattle as Nyaboganyis. They went back to his home, the police looked at his six (6) cattle but they did not take them. They proceeded to Dickson Chacha's(PW2) home and found him lying outside with Moi (deceased) and him and Jomo were ordered to lie down as well; that the police started beating them for reason they had not been told. When he started screaming asking why



he was being beaten, one officer told others to stop beating him and he was placed aside. While they continued beating the others, at about 8.00a.m. he was told to go home. He saw Nyaboganyi removing things from Dickson's house like iron boxes and battery. He learned that those he left behind were arrested but Moi died and he attended the funeral. PW3 said he was able to identify Cpl. Nyakundi of Ikerege Chief's office as one of the officers at Dickson's home but that others wore helmets and one could only see their faces.

7. PW4 Senior Supt Of Police Kipkemoi Chelule recalled that as of 26/1/2016, he was the In-charge Administration Police Specialized Stock Theft Prevention Unit in Gitongoroma Kuria East, that he was called by members of public from Ikerege reporting that their cattle had been stolen. He informed Senior Sgt. Ayub Ndakwa, now Inspector to get police officers to follow up on the report. PW4 signed the work ticket of a land cruiser for the Sergeant and they left with about twelve (12) police officers. Later at 8.00a.m., the Sergeant called to inform him that they had arrested, suspects, one had escaped and members of public chased, caught him and beat him to death, but the one who was alive was taken to Kehancha police station. He also went to Kehancha police station and saw the five (5) cattle that had been recovered; that the accused told him that he used one round of ammunition to disperse the crowd; that accused (Ayub) confirmed that his team arrested the deceased person.
8. PW5 CPL. Mike Kipkoech Kiptum recalled that he was on duty at Kehancha police station from August,2015 to February, 2019; that on 26/1/2016, a motor vehicle belonging to the Administration police went to the station with uniformed police on board, and a dead body; that after the officer in charge of the vehicle spoke to the OCS, CIP Kipsaina PW5 was instructed to remove the body from the vehicle and place it in the Kehancha police station vehicle. PW5 and the police driver took the body to Migori mortuary. He said that they hurriedly left Kehancha police station because of the crowd that had gathered wanting to know how the deceased met his death.
9. PW6 CPL. Driver Frederick Ogeto recalled working as a driver with Anti Stock Theft Unit (ASTU) at Gitongoroma, Kuria East when on 26/1/2026 he was woken up by Sgt. Ndakwa (Accused 1) and asked to proceed to Ikerege where there was a report of stock theft. He proceeded with Sgt. Ndakwa IP and David Kuria Cpl. and others. They reached Ikerege police post at 1.00a.m. where they picked up two Administration police officers and proceeded to Nyabokarange; that the police officers alighted and went to look for the stolen cattle. Him and another officer remained in the vehicle. They heard voices then a gun shot and after a short while the police officer brought three (3) suspects and cattle; that they had variety of goods, e.g., radios and mobile phones. They took the arrested people and along the way, one who was feeling sick died; that the person looked weak when getting into the vehicle and had bruises all over the body.
10. PW7 Paul Rioba Wangwi of Ikerege Sub Location is a village elder of Nyabokarange. On 26/1/2026 he ploughed using cattle from 6.00a.m. About 7.00a.m, He saw police officers in uniform. He was informed that Daniel Moi, John Mwita Wangwi, Dickson Chacha were arrested with cattle. He said that the two cattle that were recovered had been in Dickson's home for about a year. Later, about 3.00p.m. he heard that Daniel Moi had been killed. He denied seeing the people that were arrested nor did he see the police officers who did the arrest.
11. PW8 Mwita Michael Wandui of Nyabokarange recalled the 26/1/2026 at about 5.00a.m. while preparing to go to plough, he heard a scream from his brother's home a neighbour, Daniel Weisiko. He went to plough till 7.00a.m. then went to look for the brother. He found a police vehicle, a motor cycle and police officers and driver in uniform armed with guns, and that somebody was inside the vehicle. The officers asked if he knew the person in the vehicle and he identified him as Mwita Boke Sirima and that they were beating him all over the body but he did not ask why. The police placed the said Sirima in his car and he left him at the centre as he proceeded to Migori. While at Migori he was informed that



his cousin Daniel Moi had been beaten to death by police officers. He went upto Kehancha where he found Jomo and Dickson in cells and confirmed that Moi had been killed. That the two had also been assaulted and could not walk. People mobilized themselves and went to seek release of the two held at police station and they were released on free bond. He was present when post mortem was conducted on Moi, the deceased. He did not know the two accused.

12. PW9 APC Hillary Kiragu Maina was based at Administration camp Stock theft unit. On 26/1/2026 and was one of the officers who was called upon to pursue cattle rustlers in company of the two accused, Cpl. Chelimo and other officers and two others from Ikerege, they divided into two groups. PW9 Sgt Ogawa went together while the other group led by Sgt Ndakwa accused 2 Kuria and one Cheruiyot now deceased, went to arrest Moi. In the home of the suspect PW9 went to his house, they found sim cards, TV and other assorted goods which they took possession of and took the suspect to the vehicle; that those who went to Moi's house came back with cattle which they took to Ikerege Chief's camp. He said that when Moi was brought to the vehicle, he was injured and frail. PW9 was left at Ikerege to look after the cattle with Accused's 1 and 2 while the other offices and the suspects went to Kehancha police station , that Senior Superintendent was called and people went to the station, identified the cattle and they were released. He only learnt of Moi's death though PW9 said that Moi had tried to escape and a shot was fired, he was not present when that happened.
13. PW10 CPL. David Chelimo was stationed at Gitongorama Anti Stock Theft Unit camp in 2016 and on 26/1/2016 he was in the group of twelve (12) officers who left the base under the command of Sgt. Ndakwa (Accused 1) to Ikerege. At the AP camp they were joined by Cpl. Og'ao and Cpl. Gesicho. On reaching Nyabokarange Accused divided the officers into two groups, that accused's group went with Gesicho, Cpl. Cheruiyot and David who was then a P.C. He was in Sgt. Ogao's group which went to Jomo's home whom they found with four (4) heads of cattle which they took possession of. He said that it is Sgt. Ndakwa's team which arrested Moi with one cow. They took the two suspects to Kehancha police station whereas one, Moi died and was taken to the mortuary. He denied seeing any members of public at the time Moi was taken to the vehicle.
14. PW11 Francis Manyinza is the Medical Supertindent of Kehancha sub-county hospital. He was however, stepped down to allow the author of the letter he purported to produce on behalf of another.
15. PW12, Agnes Awito Augo Of Civil Registry Kuria West, produced the record in respect to the death of Jomo Mwita Wandwi on 10/6/2018.
16. PW13 Moses Humphrey Khaunya is a Principal Investigating Officer with IPOA and the Investigating officer in this case. He was assigned this matter arising from a complaint letter dated 3/6/2016 in regard to the death of Daniel Weisiko Moi. He commenced investigations by requesting for OB extracts inventory on recovered items; Of interest was the OB 13 of 26/1/2016 made by Sgt. Ayub Ndakwa in respect of the death of Weisiko. (P.exh.y) by mob justice; PW13 got a copy of the police file in which the police were still undertaking investigations in the matter and after considering all the evidence i.e statements, work ticket for motor vehicles GKB 043F Toyota Land Cruiser and GKA 001K both belonging Anti Stock Theft Unit Kuria East and Kapenguria and the Duty roster. After examination of all the materials available to him, he determined that the two accused and others who were on duty on 26/1/2016 i.e Sgt. Ndakwa, PC Kuria and Cpl. Cheruiyot (deceased) were the suspects. He stated that though Cpl. Gesicho and Ogao were adversely mentioned as having been part of the operation, he did not get sufficient evidence to connect them to the offence. He also established that the deceased died in the police vehicle but not from gun shot wounds nor was there evidence that he was killed by the mob as recorded in the OB by Sgt Ndakwa (accused.1)



17. PW14 DR. Peterlis Owuor Ogutu performed post mortem on the body of Weisiko Moi Mwita at Migori Referral Hospital on 1/2/2016. He found that the deceased had bruises on the back, at shoulder blade, cut wound on right anterior leg at the lower third which penetrated to the bone caused by sharp object, the back of head was swollen, Upon opening the head, he found that there was massive subdural haematoma with blood clot. He formed the opinion that cause of death was subdural bleeding (haematoma) between the brain and skull due to assault by a blunt object. He produced the report as P. exhibit No. 15.
18. When called upon to defend themselves accused one (1) DW 1 Ayub Mafuvo Ndakwa opted to give sworn statement. He admitted that in 2016 he was working at Anti stock theft unit Gitonganama and received a report of stock theft on 26/1/2016 and where things were hidden. He informed his in charge and on 26/1/2016 at 3.00 a.m. twelve (12) officers set off for the unit, with him in command in a Landcruiser GKP OUIF; that they arrived at Ikerege at 6.00a.m. when they were joined by Sgt. Ogao, Cpl. Gesicho; that they targeted three suspects and three homes and so he divided the group into three groups. He led the group which comprised David Kuria, Martin Cheruiyot and Robert Nyakwa whereas Sgt Ogao was with Douglas, Peter then and Kirimi; That the third group was led by Cpl. Gesicho and comprised David Chelimo, Bitok and Hillary, that his group went to the home of Jomo Wandwi , Oguo's group went to the home of Marwa Wandwi and Gesischo went to the home of Weisiko Moi and he could not tell what each group did wherever they went; that his group arrested Jomo Wangwi with four head of cattle, and regrouped at Manga Wandwi's home; that Moi was arrested with one cattle, while at Wangwi's home they found six (6) cattle and other items which were suspected to be stolen. Three officers were assigned to drive the cattle i.e. Kirimi Hillary, Douglas and Peter while the goods recovered were guarded by two officers, David Chelimo and Bitok; that when ferrying the goods, the suspects attempted to escape and were beaten by members of public who rearrested them and wanted to kill them. He described the members of public as being in their thousands; that the suspects were seriously injured and they took them to hospital but one died along the way and he made a report at Kehancha Police Station of Mob justice. He confirmed that they were dressed in combat gear and only their eyes could be seen.
19. DW2 CPL David Waweru Kuria accused 2 admitted to have been part of the operation to recover stolen cattle on 26/1/2016; that at Ikerege they were joined by Cpl Gesicho and Sgt Ogao; that they were divided into three groups; that he was with Sgt Ndkwa, Cheruiyot and Robert Ogeto ; that the other two groups were led by Cpl. Gesicho and Sgt Ogao; that Cpl. Gesicho and group went to Weisiko Moi's home while Sgt. Ogao went to arrest Mange (PW2) where assorted items were recovered. He was assigned to take the recovered goods to the vehicles and it is then he heard screams from members of public who had gathered to witness the incident; that he saw the suspects try to escape but were rearrested by members of public who beat them up. He heard Sgt Ndakwa fire in the air to scare the members of public; that the suspects were injured and they decided to take them to hospital but one died; He denied assaulting any of the suspects.
20. The Counsel did not file any further submissions after close of the defence case.
21. The accused persons faced a charge of murder contrary to section 203 of the PC. The burden is placed upon the prosecution to prove its case beyond reasonable doubt. The three ingredients to be proved are as follows; -
  1. That death occurred;
  2. That the accused persons caused the death through an unlawful act or omission;
  3. That the accused possessed malice aforethought.



22. The term ‘reasonable doubt’ was defined by Lord Denning in *Miller V. Minister of Pensions* (1947) 2 ALL ER 372 as follows

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

23. J. Mativo expressed himself on the said term in the case of *Elizabeth Waithiegeni Gatimu Vs. Republic* (2015) eKLR expressed himself as hereunder;

“To my mind the rule that the prosecution may obtain a criminal conviction only when the evidence proves the defendant’s guilt beyond reasonable doubt is basic to our law. It is necessary that guilt should not only be rational inference but also it should be the only rational inference that could be drawn from the evidence offered taking into account the defence offered if any. If there is any reasonable possibility consistent with innocence, it is the duty of the court to find the defendant not guilty...Having considered the circumstances of this case, the prosecution evidence and the defence offered by the appellant, I am not persuaded that the conviction was justifiable and that this is a case where the accused ought to have been given the benefit of doubt. To give an accused person the benefit of doubt in a criminal case, it is not necessary that there should be many circumstances creating the doubt(s). A single circumstance creating reasonable doubt in a prudent mind about the guilt of an accused is sufficient. The accused is entitled to the benefit of doubt not a matter of grace and concession, but as a matter of right. An accused person is the most favorite child of the law and every benefit of doubt goes to him regardless of the fact whether he has taken such a plea. Reasonable doubt is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence leaves the mind of the court in that condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge.”

See also *Woolmington Vrs. DPP* (1935) AC 485

24. It is now my duty to consider each of the above ingredients and the evidence tendered to establish if they have been proved.

### **Death of Deceased;**

25. As regards the death of David Weisiko Moi, the same is not disputed. The deceased met his death on 26/1/2016 following a raid by police in a suspected stock theft in Nyabokarange, Ikerege area in Kuria West. He was arrested in the raid that was led by accused 1 and died before he was handed over to the police. PW1, the deceased’s wife confirmed the deceased’s death after arrest. PW2, 4,5,6,8 and 10 saw the deceased injured and later saw him dead in the police vehicle, PW8 identified the accused’s body to (PW14) the Doctor who performed the post mortem. From the Doctors report, the deceased did not die of natural causes but injuries inflicted on him.



### **Who caused the deceased's death?**

26. The prosecution case is that the deceased was assaulted by the police officers who arrested him but the accused persons claim that the deceased was assaulted by a mob. Before considering who actually caused the fatal injuries, I think it is important to ascertain at what time accused 1 and his team arrested the suspects. PW1 talked of having been woken up about 5.00a.m. It was still dark, PW2 claimed to have been woken up about 4.30a.m. and by the time all those arrested were brought together, it was now daybreak. PW8, talked of having heard screams from the deceased's home about 5.00a.m. when he was going to plough, PW9 who was in the team that undertook the raid, said they were in Ikerege about 4.00a.m. Although accused 1 and PW6, the driver claimed to have arrived at the scene about 6.00a.m., there is overwhelming evidence that the raid was undertaken before daybreak. It was still dark and the suspects were still asleep. By 7.00a.m all those arrested were woken up from sleep and the suspects had already been arrested.

### **The other question is who arrested the deceased from his house?**

27. It is an undisputed fact that Accused was the one in command of the team of officers who went to Ikerege to follow up on report of stock theft. It is also undisputed that it is accused who divided the officers into groups and directed where each went. Because it was dark in their houses and the manner in which the police officers were arrested i.e they wore helmets, PW1,2 and 3 were not able to see and therefore identify the arresting officers. Although both the accused deny being in the group that arrested the deceased, PW9 and 10, police officers who were with them in the operation maintained that, the accused' and another were in the group that arrested the accused' from his house. In addition, PW4 testified that accused reported to him that he arrested the deceased and that when the deceased tried to flee, members of public rearrested him. PW4's testimony corroborates PW 9 and 10's testimonies that it is accused 1 and his team who went to the deceased's house and arrested him.
28. PW 1,2 and 3 vividly recalled that they were woken up by police who reigned violence on them even before telling them why they were there or why they were arresting them. PW1 said that once the deceased stepped out of the house the two officers who had come started to beat him on the back till he fell. The police later tied his hands with a rope, that they continued to beat him all over the body and he kept falling and they ultimately left with him. PW2 on his part was removed from under the bed where he hid after the police broke the door. He was hit on the head with a metal till he fell and they then stepped on him. They continued to beat him when he was unable to get up.
29. PW2 said that Moi(deceased) and Jomo were taken to his home about 5.30a.m. and by then they had been beaten and were limping and unable to walk; that the police continued to beat them. He said that him and deceased could not walk and had to be helped by the police. PW2 denied that neither him nor Moi ever tried to escape and that they were beaten by the mob.
30. PW3 on being arrested, was taken to PW2'S home where he found the deceased and PW2 and all of them had been beaten and injured.PW1 confirmed that the deceased was handcuffed by those who went to their house. PW3 also saw PW2 and deceased, handcuffed and one wonders how they would have run away when handcuffed.
31. DW1 and 2's defence is that members of public inflicted the fatal injuries on the deceased after he tried to escape. DW1 said that the three (3) suspects tried to escape from those who were guarding the suspects. However, the court was not told which officers were guarding them. Whereas DW1 said the suspects did not go far, to the contrary, DW2 stated that the suspects were not arrested until after thirty (30) minutes, meaning they had gone far. PW9 and 10, police officers who testified to having been in Sgt. Ogao's group told the court that the deceased tried to escape though they did not see, how or



when he tried to escape. From their testimony it is clear, it is what they were told, hence hearsay. To the contrary DW1 and 2 claimed that all the suspects tried to escape and were apprehended by members of public. But surprisingly PW9 and 10 never saw the members of public who were described by DW1 as being in their thousands. PW10 specifically denied that any member of public were present. It is only PW6 who mentioned members of public who went to Kehancha police station demanding to know who had killed the deceased. PW6 had to hurry away with deceased's body. I will believe and find that this raid was undertaken when people were still asleep and there were no members of public present at that time.

32. PW9 and 10's evidence goes to corroborate PW4 Chelule's testimony that he was informed by DW1 that when the deceased attempted to escape DW1 and DW2's defence that all the suspects escaped contradicts what PW4, 9 and PW10 told the court. From these glaring contradictions, it is evident that the accused persons were trying to cover up for what they had done to the deceased that led to his demise. This court will prefer the testimonies of PW1,2,9 and 10, that it is accused's 1, 2 and another who went to arrest the deceased. I further believe PW1's, testimony that once, Accused persons entered the deceased's house, the accused started to assault them indiscriminately that caused the injuries that led to the death of the deceased even before he reached the police station.
33. The accused's defence is riddled with inconsistencies, are untrue and I dismiss them as such.

**Whether accused possessed malice aforethought; malice aforethought is defined in section 206 of the PC as follows; -**

34. Malice afterthought shall be deemed to be established by evidence proving anyone on more of the following circumstances
- a. An intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
  - b. Knowledge that the act of omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
  - c. An intent to commit a felony;
  - d. An intention by the Act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony
35. In the case of R.V. Tubere s/o Ochen (1945) 17 EACA 63, the Eastern African court of Appeal defined Malice aforethought,
- “In determining existence or nonexistence of malice, one has to look at the facts proving the weapon used, the manner in which it was used and part of the body injured”
36. In the case of Hyam Vs. DPP (1974) AC the court held inter alia that
- “Malice aforethought in the crime of murder is established by proof beyond reasonable doubt which during the act which led to the death of another, the accused knew that it was probable that, that act would result in death or serious bodily harm”
37. In the instant case, PW 1,2 and 3 recalled that the suspects were beaten indiscriminately. Even when the deceased and PW2 could hardly walk after the initial beating, the police officers continued to assault them. No doubt the manner of assault was likely to lead to death or serious bodily harm. The injuries



found on the deceased speak for themselves i.e cut on the leg, trauma to the occipital causing subdural haematoma. I have no doubt that the actions of the accused were laden with malice aforethought. I find both accused guilty of the offence of Murder contrary to section 203 of the PC and convict them accordingly.

**DELIVERED, DATED AND SIGNED AT KAPENGURIA THIS 3RD DAY OF OCTOBER, 2024.**

**R. WENDOH**

**JUDGE**

In the presence of;-

Ms. Kogos for the State

Court Assistants Emma/Juma

Mr. Kisera for both accused

Accused 1 and 2 present

