REPUBLIC OFKENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO.38 OF 2010

LESIIT J.

REPUBLIC.....PROSECUTOR

VERSUS

PHILIP ONDARA ONYANCHA.....ACCUSED

JUDGMENT

The Charge

1. The accused, Philip Ondara Onyancha, was charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence are that;

> **"Philip Ondara Onyancha: On the 30th day of May, 2008 at Mount Kenya Building along Kombo Munyiri Road in Nairobi within Nairobi Province murdered Jackline Chepngetich Misoi."**

Background

2. The accused was arraigned before this court on the 18th June 2008. He was not required to plead to the charge awaiting Mental Assessment which was finally done and on the 19th July, 2008 the charge was read to him and he pleaded not guilty to the charge. The case was set for hearing on 22nd to 25th February 2011. The case did not proceed on those dates neither was it heard on subsequent dates fixed for the hearing of the case. The last order was made on 6th July, 2011 by Ombija, J. (as he then was) fixing a mention date in the matter for 3rd October, 2011. It was not mentioned on that date. Instead the file was stayed by Ombijah, J. (as he then was) in an order made in Milimani Criminal Case No. 36 of 2010, which was one of the other two cases facing the accused.

3. The next date the matter was handled after that was on the 15th May, 2018. The accused appeared before me for purposes of fixing hearing dates. This was after the stay order suspending the trial of the case by Ombijah, J. was lifted by Wakiaga, J. in Milimani Criminal Case No. 36 of 2008. Wakiaga, J. ordered that new dates for the hearing of the case be taken before the Presiding Judge of the Division. The date was not given until 30th July, 2018 as the court sought to have counsel appointed to represent the accused in the matter. I thought it was important to give that background information into the case to explain the reason why the case took so long to hear and finalize.

Prosecution's Case

4. The case was heard with the prosecution calling fourteen (14) witnesses. The facts of this case according to the prosecution witnesses are that the deceased was found dead in her apartment at Mount Kenya Flats. PW1, Edward Kiplangat, is the deceased's father. He told the court that the deceased had travelled to see him in Kericho. She informed him that she had gotten a new job in Dubai and was preparing to travel there. She sounded ecstatic about her new job. He stated that she travelled back to Nairobi on 27th May 2008. A few days later, he was informed by the police that his daughter had committed suicide and that her body was found dangling in her house.

5. PW1 travelled to Nairobi accompanied by his brother, PW2. PW9, an aunt to the deceased, joined them in Nairobi. The three of them went to Kamukunji Police Station and were taken to the deceased's house by the police. PW1 and PW2 saw a suicide note inscribed on the bathroom wall with the names of PW1's other children written on the wall. PW1, PW2 and PW3 told the court that they did not see any reason why the deceased would commit suicide.

6. PW3, Ndungu Gichu, testified that on 30th May 2008, his friend who was employed as the night guard at Mount Kenya Building, one Ndichu, asked him to stand in for him that night as he had to travel home urgently. PW3 stated that the building hosted Barclay Bank on ground floor and residential houses on the upper floors. He was guarding the gate which led to the residential houses. He was required to lock the gate at 11.00 pm and open it at 4.00 am. That night at about 2.00 am, he saw a man walking down the stairs from the residential area. He identified the said man as the accused. The accused asked him to open the gate for him. They walked down together and he let the accused out. The accused informed him that he was coming back. PW3 locked the gate and went back to his sitting area.

7. PW3 testified that the accused went back at 3.00 am in a red car. He was accompanied by a driver. PW3 opened the gate for them and they went upstairs. A few moments later they came back down carrying a heavy black suitcase. He opened the gate and let them out. He testified that the corridors were well lit with electric lights and he was therefore able to see the accused person to be able identify.

8. PW4, Evanson Maina, who was a caretaker at the said apartment testified that the deceased had travelled back from Kericho on 28th May 2008. She sent him to pay her rent at Anniversary Towers. He said that she had rented the house alone. He went to her house the following morning (29th May 2008) to give her the payment receipt. He told the court that the house was a bedsitter and he could clearly see inside. He stated that the deceased was in the company of a man in her house. PW4 identified the said man as the accused person. He stated that he had seen the accused before on numerous occasions at the deceased's house.

9. PW4 stated that the deceased asked him to go back to her house the following day so that she could give him money to pay her electricity bill. The following day which was a Friday, 30th May 2008, PW4 went to the deceased's house as agreed. He knocked on the door but there was no response. He tried calling her phone but it was switched off. He left. The next day he went back and knocked on the door. Again, there was no response and the deceased's phone was still switched off. He did not go to the apartment on Sunday.

10. On Monday, 2nd June 2008, PW4 testified that he informed his boss that there was a tenant (the deceased) who had gone missing since 30th May 2008. His boss instructed him to report the matter at Kamukunji Police Station. At the police station, he was given two police officers who accompanied him back to the deceased's house. The padlock on the deceased's door was cut and the police managed to gain access to her house. PW4 stated that he saw a body being carried out of the deceased's house moments later.

11. PW5, Bill Onyango, is a half-brother to the deceased. He stated that on 29th May 2008, he received a call from the deceased at about 9.30 pm. She called him using a different number. She told him that she was just checking up on him. She also told him that she was hanging out with her friend known as Philip. The following day, on 30th May 2008, he tried calling the deceased but his calls did not go through. He decided to go to her house the next day which was a Saturday. Her door was locked. He tried to inquire from a friend of the deceased who lived on the upper floor whether she knew where the deceased was to no avail.

12. PW5 went back to the deceased's house the following day on Sunday. The caretaker informed him that he did not have a spare key to the deceased's house. They tried opening the window to her house. It was however dark and they could not see much inside. He called the number (0712183747) that the deceased had used to contact him on 29th May 2008. He asked the person on the line whether he was Philip to which he answered in the affirmative. Philip told him that he had not seen the deceased since 29th May 2008.

13. On 2nd June 2008, PW5 went to Kamukunji Police Station and reported that the deceased was missing. Two police officers accompanied him to the deceased's house. They managed to gain entry into the deceased's house. PW5 stated that he opened the door to the bathroom and saw the deceased's body hanging from a scarf tied to the shower. Some of her household items such as the television set, a stereo and a suitcase were missing. There was a note on the wall containing the names of her siblings except his. PW5 stated that the deceased was not stressed and that she did not have any financial issues that would push her to take her own life.

14. PW6, Sgt. James Tanki, was one of the officers who accompanied PW4 and PW5 to Mount Kenya Building together with his colleague IP Laibei on 2nd June, 2008. They proceeded to room 207 which was leased by the deceased. The door was locked but the window was open. There was a foul smell coming from inside the house. PW4 got someone to break the padlock on the door and they gained access into the house. The room was in order with nothing strewn on the floor. When they opened the bathroom door, they saw the deceased's body dangling from a scarf tied to the shower. There was a note on the wall which stated;

> **"I had debt but I cleared some by selling all my things. Bye, sorry this is the end for me. Mob frustration. At least I am now resting in peace. Sorry, bye was tough for me. But anyway I had a last moment for me don't blame anybody. It was my own. I enjoyed myself with a friend before I decided on my own to end my life. Forgive me Daddy, Carol, Denno and Mark."**

15. PW6 stated that the scene of crime officer, PW13 came in and took photographs of the scene. PW6 made an initial conclusion that the deceased had committed suicide. However, in June 2010, the accused was arrested with regard to a different case involving a kidnap. He took sample writings from the accused which he sent over to a document examiner, PW10 on 27th July 2010, together with photographs of the writing on the wall in the deceased's house.

16. PW10 confirmed receiving the hand writing samples and other exhibits on 27th July, 2010 for examination. PW10 testified that he received questioned documents P. Exh. 4(a) and (b), specimen handwritings of the accused P. Exh. 1 (a) to (d), 2 (a) to (d) and 3 (a) to (d). He was requested to determine whether handwritings in questioned documents were made by the same hand when compared with the specimen handwritings (of accused). After his examination of the exhibits, PW10 confirmed that the accused's handwriting matched the writing found on the deceased's wall. PW10 produced into evidence a report of his findings dated 22nd March 2013 as P. Exh.6, together with the Exhibit Memo Form as P. Exh.6(a).

17. The scene of crime officer, Cpl. Johana Tanui, PW13 testified that he visited the scene of crime on 2nd June 2008. The door to the house had been broken into. He stated that he saw blood stains on the inner side of the main door of the deceased's house. The bed was not spread.

The deceased's body was hanging in the bathroom. Her body was hanging from a scarf which had been tied to a metal rod. There was a stool next to the body. There were blood stains on the floor between her legs and on her nose. The deceased was wearing a trouser and a pullover. There was a foul smell coming from the body which meant that the body had been there for a while. PW13 stated that he took nine photographs at the scene which he produced in court as P.exh. 4(a) to (i), accompanied by a certificate.

18. PW7, Victor M. Karigi, testified that the deceased was his girlfriend. He stated that he met her in 2005 while in college. They lived in the same area in Westlands. The deceased became his girlfriend in 2008. He however stated that he had never been to the deceased's house and that they used to meet in town. The week before her death, the deceased had informed him that she wanted to travel home. She told him that she intended to travel abroad when she came back as she had secured a new job. On 27th May 2008, she called him from Kericho requesting for Kshs. 1,000/= for payment of her bus fare to Nairobi.

19. PW7 testified that they spoke again on 29th May 2008 when the deceased informed him that she was on her way to Nairobi. At about 10.00pm on the same day, the deceased told him that she had arrived safely in Nairobi, and was at Hunters Restaurant on Moi Avenue having fun with her friends. That was the last time PW7 heard from the deceased. He stated that he tried to call her the next day but her phone was switched off. Two months later, the police informed him about the death of deceased, and requested him to go to the police station for interrogation. Upon cross-examination, PW7 stated that the police informed him that he was the last person to speak to the deceased on phone, and that was the reason why they needed to question him.

20. PW8, IP MacDonald Okoth, testified that in May 2010, he was attached to the Special Crime Prevention Unit at DCI Headquarters. He stated that a report was made to Karen Police Station that a person by the name Anthony Muiruri had been kidnapped and the assailant was demanding for ransom payment. The case was handed over to their unit. He testified that they managed to track the number that was asking for the ransom, which led to the arrest of the accused person on 3rd June 2010. The phone and sim card that were used in demanding for ransom payment were recovered from the accused's house.

21. PW8 testified that aside from the kidnap case, there were several other cases of missing persons which had been reported to various police stations including Kamukunji Police Station, which were linked to the accused person. There was an inquest file at Kamukunji Police Station with regard to the death of the deceased in the present case. PW8 testified that the DCIO Kamukunji requested for the accused person to be presented to him in regard to the investigations touching on the inquest.

22. PW8, in the company of other officers in his Unit, presented the accused person to the DCIO Kamukunji. PW8 testified that the accused person led them (i.e. PW8, Kamukunji DCIO and other officers from the Station) to a house where the deceased used to reside located in Kamukunji area, on top of a building housing Barclays bank. PW8 testified that they were led to room 207 on upper floors of the building. Kamukunji police officers thereafter took over the investigation with regard to death of the deceased.

23. PW11, Dr. Minda Okemwa, performed a post mortem on the deceased's body on 5th June 2008. The body of the deceased was identified to him by her father, PW1. Dr. Okemwa stated that there were signs of early decomposition of the body. He said that the deceased had abrasion marks on her neck consistent with the woolen scarf which was found around her neck. He said that he noted that the scarf around the deceased neck had a tight knot posteriorly, that is, at the back of deceased neck. He noted haematoma and congestion of vessels in the neck muscles. The deceased's face was swollen and her tongue was protruding. Some of her internal organs were prolapsing through her vagina due to the process of decomposition. No injuries were noted on her other organs. The pathologist concluded that the cause of death was asphyxia due to neck compression by a ligature. He said that he was unable to tell whether it was suicide or murder. He produced into evidence his post mortem report as P. Exh 9.

24. Upon cross-examination, PW11 explained that he did not notice any bite marks on the deceased neck or anywhere else, and that he could not tell if any sucking of blood occurred. He stated that he could not determine whether the deceased was laying horizontally or vertically when she died.

25. PW12, Dr. Donald Kokonya, was one of three members of a panel which on 14th July, 2010 examined the accused to determine whether he suffered from any mental disorder. The other panelists were Dr. David Kiima, the then Chief Government Psychiatrist and Director of Mental Health, and Dr. James Mburu a Specialist Consultant Psychiatrist. After three hours and forty-three minutes of forensic psychiatry assessment of the accused, the panel concluded that, one physically the accused was Fit to Plead, and two on the mental side the accused had a narcissistic personality disorder. The Panel findings is dated July 14th, 2010 and was produced by PW12 as P. Exh 10.

26. PW14, Benjamin Mwaliko, now retired, was a Senior Superintendent of Police in 2010. On 12th June 2010, he was instructed by the Officer in Charge, Special Crimes Unit, Mr. Richard Katula to avail himself to record a video statement which was to be given by the accused. PW14 wished to produce the CDs of the video confession in court, as well as typed transcripts. After viewing part of the video which covered this case, Counsel for the accused objected to the production of the video recording.

27. Counsel for the accused objections were based on technicalities and concerned the process adopted before and during the recording of the accused statement. Counsel for the accused relied on **Rule 4(1), Rule 4(1)(c), Rule 6(2)(b), Rule 9** of **The Evidence (Out of Court Confessions) Rules, 2009**.

28. Learned Prosecution Counsel, Mr. Omirera, urged that the **Rules** were observed by PW14 when taking the video confession. He urged that the mere technicalities raised by the defence were not sufficient grounds for rejecting a confession.

29. In a ruling dated 22nd July 2019, I found that the video confession, as well as the transcripts were inadmissible since The Evidence (Out of Court Confessions) Rules, 2009 were not adhered to by PW14 when recording the confession by the accused person, and that his Bill of Rights had been infringed upon. More specifically, I ruled that by handcuffing the accused when taking the confession statement, the police violated the provisions of Rule 4(1)(c) of the Rules which prohibits an arrested person from being subjected to any form of threat, coercion, degrading or inhuman treatment. Hand cuffing him was a reminder that he was not free.

30. Secondly, the accused elected to have his brother present as he gave his confession statement, but PW14 did not give him a chance to communicate with his brother. He instead delegated that role to another officer who reported that his brother was not available. This was a violation of Rule 4(1)(i) of the Rules as well as the accused's right under Article 49(1)(c) of the Constitution. The ruling is part of the record of this case.

31. PW13, CPL Johana Tanui was the Crime Scene Officer who visited the scene and took photographs on the 2nd June, 2008.He took several photographs marked P. Exh. 4 (a) to (i), and his Report P. Exh 11. They document the position in which the deceased body was found, hanging on a scarf around the neck, with blood flow from the nose. He also documented a stain on the outer side of the main door in P. Exh. 4 (a). He said it was a blood stain. However, looking at P. Exh. 4(a), it is clear that the stain was on the outer side, not inner side of the door of the house as he stated.

Defence Case

32. The accused was placed on his defence. He chose to give a sworn statement and to call one witness. In his defence, the Accused denied that he murdered the deceased. He testified that the deceased was not known to him. He stated that he was arrested on 3rd June 2010 and informed that his arrest was in relation to a kidnap case. He was eventually charged before this court in HCCR No.36 of 2010. The accused further stated that on 12th June 2010, he was taken to Director of Criminal Investigations Headquarters in Nairobi, where PW8 wanted him to give video confession, and repeat what he had told the media.

33. The accused denied knowing the deceased or her family. He stated that he was born in Kericho and lived in Kapkwen Tea Estate where his father used to work. He stated that the deceased's family lived in Tagabi Estate and that he had never been to that Estate. The accused stated that after he completed his primary school studies, his father retired and they relocated to Kisii. He said that he went to Kenyatta High School in Nyeri and that he has never returned to Kericho since.

34. It was the accused person's testimony that he did not know PW3 and only saw him for the first time in court. He stated that no identification parade was conducted for PW3 to identify him as the man who was at Mount Kenya Building on the material night. He averred that the testimony of PW4 was untrue. He stated that the phone number belonging to a Philip given by PW5 did not belong to him. He asserted that he was not with the deceased person on 29th May 2008 when PW5 received that phone call from the deceased.

35. The accused testified that PW6 took handwriting samples from him but that the samples adduced into evidence by the prosecution (P. Exh. 1, 2 and 3) were not the same samples he gave PW6. He pointed out that the exhibit memo (P. Exh. 5) was dated 3rd June 2008, yet he was arrested on 3rd June 2010 and not 2008.

36. The accused further testified that the report by the panel of Psychiatrists produced into evidence by PW12 was meant for HCCR Case No.36 of 2010. The accused stated that he has never been insane. He stated the police officers had initially concluded that the deceased committed suicide. He asserted that no evidence pointed to him as the person who murdered the deceased. He pleaded innocence to the charge.

37. DW2, Onchwari Wycliffe Arita, stated that he and the deceased used to date. He stated that he met the deceased in 2002 in Kericho. They reconnected in Nairobi in 2003. He testified that when the deceased finished her college studies, she moved into his house in Makadara along Jogoo Road. He stated that they were just friends at the time. He said that the deceased moved out after she found employment in 2007. He testified that she got a house in Gikomba. DW2 stated that he used to visit the deceased twice in a month. Sometimes he would spend the night. DW2 testified that prior to her death, he had visited the deceased on four different occasions.

38. It was DW2's testimony that he went to visit the deceased on 28th May 2008. He spent the night. The next morning, the deceased informed him that her brother Dennis had run away from school and that she wanted to go to Machakos to look for him. She was to go to Machakos on Friday, 30th May 2008. DW2 stated that he left the deceased's house on 29th May 2008 at about 11.00 am. The deceased requested for Kshs.2000 to pay her water bill. DW2 promised to give her Kshs.1500. She was to go to his place on 30th May 2008 to pick the money. She however never showed up. DW2 stated that he did not see the deceased again. He stated that he did not know if she went to Machakos that Friday.

39. DW2 testified that the deceased's sister Maureen called him and informed him that deceased had passed away. DW2 stated that the deceased was a jovial person who spoke about her future plans of being a mother and going back to school. He testified that he did not know whether the deceased was in a relationship with any other man apart from himself. He stated that he did not know the Caretaker of the building where the deceased resided. DW2 stated that he gave his statement to the police on 5th June 2008 after the deceased's father, PW1, requested him to do so. He stated that he did not know who killed the deceased.

SUBMISSIONS

40. Mr. Omirera, learned Counsel for the prosecution did not file any submissions in this case. He was to file some upon service to him by the defence of their submissions. Counsel confirmed to the Court Assistant Mr. Kinyua that he received submissions in time from Mrs. Chepseba for the accused and that he opted not to file any.

Submissions by Mrs. Chepseba, Counsel for the Accused

41. Counsel for the Accused, Mrs. Chepseba, submitted that the accused in his defence denied knowledge of the deceased or her family. She stated that the evidence by the prosecution that the accused was born and brought up in Kericho does not prove that he knew the deceased or her family.

42. Mrs. Chepseba urged that PW6 gave contradicting information with regard to dates of the events and information contained in the exhibit memo P. Exh. 5. Counsel urged the court to dismiss the report by the panel of Psychiatrists produced by PW10, stating that the report was prepared in regard to Criminal Case No.36 of 2010, and that the Judge in that case Wakiaga J., held that the report was vague with regard to the mental status of the accused.

43. In regard to the handwriting samples Mrs. Chepseba submitted that they were not properly obtained by the investigating officers. She submitted that the accused denied leading police officers to the deceased's house. She urged the court to note that PW8 told the court that the deceased's death was first declared a suicide in 2008. She stated that the investigating officers were not able to explain how they linked the accused to this case.

44. Regarding the evidence of PW4 counsel urged the court to disregard it as he redacted his statement on vital issues during cross-examination. She stated that PW4 did not indicate in his statement that he saw a male adult in the deceased's house. Counsel stated that this court already dismissed the alleged confession by the accused and urged the court to disregard any evidence by the prosecution on confessions made to the press by the accused.

45. Mrs. Chepseba submitted that the evidence of DW2 proved that the accused was not at the deceased's house on 29th May 2008 as alleged by PW4. She stated that PW7 and DW2 ought to be the suspects in this case, and not the accused, as they were the last people to talk to the deceased.

Issues for determination

46. I have carefully considered the evidence adduced by both the prosecution and the defence, as well as the submissions by Mrs. Chepseba for the accused. Having considered the evidence by the prosecution and the defence, I find that the issues for determination are as follows:

i. Whether the prosecution has established the accused mental status at the time of this offence;

ii. Whether the circumstantial evidence adduced by the prosecution was sufficient to sustain the charge against the accused persons;

iii. Whether the accused defence of alibi can stand.

Analysis

47. The accused faces a charge of murder contrary to **section 203** of the **Penal Code**. That section provides that:

"Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder."

48. Malice aforethought has been defined under **section 206** as follows:

"Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:

(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;

(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;"

49. The standard of proof being a criminal case, is proof beyond any reasonable doubt. The burden of proof lies with the prosecution to adduce evidence to prove the three ingredients for the offence of murder, that is; that it was the accused person who caused injury to the deceased by either an unlawful act or an omission; that the deceased died as a result of the injuries she suffered; and that the unlawful act or omission was perpetrated by malice aforethought.

50. The ingredients of the offence of murder were set out in the case of **Roba Galma Wario vs Republic [2015] eKLR** where the court held thus:

"For the conviction of murder to be sustained, it is imperative to prove that the death of the deceased was caused by the appellant; and that he had the required malice aforethought. Without malice aforethought, the appellant would be guilty of manslaughter, as it would mean the death of the deceased during the brawl was not intentional."

Whether the prosecution has established the accused mental status at the time of this offence.

51. The prosecution relies on the evidence of PW12, Dr. Kokonya. Dr. Donald Kokonya, was one of three members of a panel which on 14th July, 2010 examined the accused to determine whether he suffered from any mental disorder. The other panelists were Dr. David Kiima, the then Chief Government Psychiatrist and Director of Mental Health, and Dr. James Mburu a Specialist Consultant Psychiatrist. They carried out a three hours and forty-three minutes forensic psychiatry assessment of the accused. PW12 testified that the accused had an exaggerated sense of self-importance and had pre-occupations with fantasies of unlimited success, power and brilliance, and believed he was a unique

person. PW12 stated that the accused had unrealistic expectations in life and lacked empathy. He had been traumatized by his mother and never referred to her in his conversation.

52. PW12 said that what the accused had was a personality disorder and that it alienated him from societal norms, and this was a source of stress and psychological distress to him, which pushed him to substance abuse. He stated that the accused used bhang and was not in good terms with his siblings. PW12 testified that the death of his father also added to the accused's stress. He testified that they concluded that the accused was physically normal but on the mental side, he had a personality narcissistic disorder which was the primary driver of his actions. He testified that the panel concluded that the accused was fit to plead. PW12 produced the Report of the Panel findings dated July 14 th, 2010 as P. Exh 10.

53. The accused objected to the Report by the Panel of Psychiatrists saying that the report was meant for the Milimani High Court Criminal Case No.36 of 2010 against him and not for this case. It was the accused testimony that he has never been insane.

54. The objection by the accused that the report could not be entertained in this case has no merit. The accused is facing murder charges before this court in Criminal Case numbers 36, 37 and 38 of 2010. It will be noted that the other two cases are in the same sequential serial numbers. The three cases having been filed against the accused within the same week.

55. The police had presented the accused with different Mental Reports for each case. However, the court felt the need to have a team of psychiatrists examine the accused to come up with a specialized and comprehensive report, as it had become apparent that a second assessment was necessary. The order for the second assessment was made in Case No. 36 of 2010 but was never meant to be exclusive to that case. This is because in all three cases against him, the issue of his mental status was under scrutiny. It could not have made any sense to have Mental Assessments against the accused to be carried out in respect of each case. The objection has no merit.

56. The accused was found to have suffered trauma believed to have been by his mother. He was found to have a narcissistic mental disorder whose characteristics the three psychiatrists described as having an exaggerated sense of self-importance and pre-occupations with fantasies of unlimited success, power and brilliance, and belief he was a unique person. The accused was said to have unrealistic expectations in life and lacked empathy. PW12 testified that persons with that disorder were very intelligent. They said it was a disorder but they found him fit to plead. The accused does not dispute that he is fit to plead, but hasted to add that he had never been insane in his life. Considering the evidence adduced before me, I find that no evidence was adduced to the effect that the accused was insane, whether at the time of arrest, or during the commencement of the trial.

Whether the circumstantial evidence adduced by the prosecution was sufficient to sustain the charge against the accused person.

57. The prosecution is relying on circumstantial evidence in this case, as there was no eye witness of how the deceased met her death. There was no dispute that the deceased died. What is disputed is the cause of death, whether self-inflicted in the form of suicide, or whether she was murdered. The pathologist, PW11, testified that the cause of death of the deceased was asphyxia due to neck compression by a ligature. The pathologist, PW11 did not commit himself as to whether the death was by suicide or by third party. He however made other significant findings, to quote him 'Tight knot posteriorly' on the neck. In other words, the rope around the neck had a tight knot at the back of the neck of the deceased. The doctor declined to make a decision as to whether this was a suicide case or a murder.

58. The question of how experts' opinion should be treated by the court is quite clear and established in Kenya. In **DHALAY vs. REPUBLIC {1997} KLR 514** the Court of Appeal held:

> **"It is now trite law that while the courts must give proper respect to the opinion of experts, such opinions are not, as it were, binding on the courts and the courts must accept them. Such evidence must be considered along with all other available evidence and if there is proper and cogent basis for rejecting the expert opinion, a court would be perfectly entitled to do so."**

59. The acid test set out in this case [**Dhalay vs Rep** supra] is that an expert's opinion can only be rejected if there is proper and cogent basis for rejecting it. The principle was fortified in an earlier case **NDOLO vs. NDOLO {1995} KLR 390**. The Court of Appeal held:

> **"The evidence of PW1 and the report of MUNGA were, we agree, entitled to proper and careful consideration, the evidence being that of experts but as has been repeatedly held, the evidence of experts must be considered along with all other available evidence and it is the duty of the trial court to decide whether or not it believes the expert and give reasons for its decision… of course where the expert who is properly qualified in his field gives an opinion and gives reasons upon which his opinion is based and there is no other evidence in conflict with such opinion, we cannot see any basis upon which such opinion could ever be rejected."**

60. Applying the principle in the two cases above, the pathologist in this case was expected to give an opinion after his examination, but more important the reason for his opinion. The doctor stated that he was unable to tell whether the deceased committed suicide or whether she was murdered. In his evidence in court PW11 testified that the body of the deceased had abrasions, bruises and marks around her neck caused by a woolen scarf which had a tight knot posteriorly. He explained that the knot was posteriorly, at the back of the neck. I do not wish to make this a big issue as none was raised by either of the parties in this case. However, I found it rather curious that a person could tie a knot tightly at the back of the neck and still manage to hang themselves. The knot was so tight it gave the pathologist trouble removing it. How could the deceased manage to tie the knot at the back of the neck to hang herself? The pathologists in the cases of hanging I have dealt with in my career, and they are many, described that in a suicidal case, the ligature around the neck runs horizontally until the back of the ears where it runs vertically to the point where it was tied by the victim. Any ligature going round the neck, especially where the knot is posteriorly/back of neck, is unlikely to be a case of suicide.

61. I say this at the risk of being accused of coming up with theories without evidential support. But again, it is the duty of the court to

examine expert evidence of this nature against all other evidence and determine whether to accept or reject it. PW11 did not commit himself either way. I thought it was important to highlight that piece of evidence. I leave it at that.

62. In regard to circumstantial evidence the law is well settled. The Court of Appeal in the case of **Musili Tulo vs Republic [2014] eKLR** stated thus:

> **"Circumstantial evidence is as good as any evidence if it is properly evaluated and, as is usually put, it can prove a case with the accuracy of mathematics."**

63. In **Abanga alias Onyango vs Republic Cr. Appeal No.32 of 1990** the Court of Appeal set out three tests to be applied to determine whether the circumstantial evidence relied on by the prosecution can lead to a conclusion that it is the accused who committed the offence under consideration. The court held thus:

> **"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."**

64. The other principle applicable is that before a court can convict an accused based on circumstantial evidence, it must satisfy itself that there are no other co-existing circumstances, which would weaken or destroy the inference of guilt. This was reiterated in the Court of Appeal case of **Parvin Singh Dhalay vs Republic [1997] eKLR**.

65. The first test is whether the circumstances from which an inference of guilt is sought to be drawn, has been cogently and firmly established by the prosecution. The prosecution relies on the evidence of several witnesses. Two of the witnesses are relied on for purposes of identification. These were PW3 and PW4. PW3 who was the night watchman on duty, relieving the regular watchman, one Ndichu. He said he could not re-call the date but that it could have been 30th May, 2008. The other witness was PW4. This was the long standing Caretaker of the building where the deceased lived.

66. PW4's evidence was that on the 28th May, 2008 the deceased sent him to Anniversary Towers to pay her rent. He said that the following day on 29th he took the receipt to the deceased at her house. He said that the deceased opened the door to receive him. That was the last time he saw her alive.

67. Mrs. Chepseba for the accused urged the court to disregard the evidence of PW4 on grounds he admitted in cross-examination that he did not record in his statement that he had seen a male person inside the deceased house. Further he was not specific as to the times he had seen the accused before the material time. She urged that PW4 did not specify the date police visited him accompanied by the accused. Counsel urged the court to note that PW8, the Investigating officer, did not say that he saw PW4 at the scene when the body of the deceased was discovered.

68. The very first issue to tackle is that of the quality of identification by PW3 and PW4. PW3 said he saw the accused at night, 2am and later same night at 3am. He describes the place he was when he saw the accused as a corridor, and the lighting condition being well lit with electricity lighting. He said that the electric light was near the gate where he walked to open for the accused on both occasions. No identification parade was conducted for him to identify the accused.

69. The most important fact about PW3 is that he was an old man and was woken up in the first instance by the person he claims was the accused. It was his testimony that he was woken up from slumber to open for the accused. He said when the accused returned, he peeped from the corridor and saw the accused downstairs and that having recognised him, he went and let him in.

70. I have considered that the events PW3 testified to took place ten years before his evidence in court on 7th December 2018. I also considered that no ID parade was conducted before his testimony in court. I also considered that PW3 was not sure of the date when the events he testified to took place, nor did he know to which house the person he let out, and later in and out again, in that order, had been to. The lighting may have been conducive for identification, however, he identified him in court ten years later. That is such a long time for a person who saw another for the first time to recall him. Unless there is something special about him that could aid his memory remember him by. No such evidence was given.

71. Moreover, PW3 was not keen in his relief duties that night. He did exactly what Ndichu asked him not to do. He was to lock the building at 11pm and only open at 4am. I do not believe that he was really interested in knowing whom he was letting in and out that night. He did not bother to find out from which house the person came from or went to when he returned. He was not alarmed when the person brought help to carry heavy items from a house under his guard. He opened without asking any queries. I find PW3 of questionable reasoning, unreliable. The evidence of identification made ten years after the event, and being dock identification was in the circumstances very poor. The identification by PW3 was therefore poor in quality, and wholly unreliable.

72. For this proposition I am guided by the following decisions. In **DAVID KARANJA & OTHERS V REPUBLIC CA No.117 of 2005** where the Court of Appeal, OMOLLO, WAKI and DEVERELL, JJA held:

> **"It is not difficult to arrange well-conducted parades. The orders are clear. If properly conducted, especially with an independent person present looking after the interests of a suspect, the resulting evidence is of great value. But if the parade is badly conducted and the complainant identifies a suspect the complainant will hardly be able to give reliable evidence of identification in court. Whether that is possible, depends upon clear evidence of identification apart from the parade. But of**

course if a suspect is only identified at an improperly conducted parade, it will be concluded by the witness that the man in the dock, is the person accused of the crime; and it will be difficult, if not impossible, for the witness to dissociate himself from his identification of the man on the parade, and reach back to his impression of the person who perpetrated the alleged crime."

73. In **GABRIEL KAMAU NJOROGE -V- REPUBLIC [1982-88] I KAR 1134** the Court of Appeal held:

"a dock identification is generally worthless and the court should not place much reliance on it unless this has been preceded by a properly conducted identification parade. A witness should be asked to give the description of the accused and the police should then arrange a fair identification parade."

74. As for PW4, he was among the first persons to report the deceased was missing to the police. No ID parade was conducted for him to identify the accused. Mrs. Chepseba for the accused urged the court to find his evidence inconsistent and incredible. Counsel urged that the omission of the mention of the accused in his statement to the police is a serious omission. Counsel raised issue with the witness' vague evidence in terms of not saying when and how many times he saw the accused with the deceased in the building. His evidence was also given ten years after the incident.

75. The identification by PW4 is that of recognition. He said that he knew the accused before and stated that he had seen the accused inside the house of the deceased many times. The Court of Appeal dealt with the issue of identification by recognition in **Wamunga vs. Republic [1989] eKLR** and had this to say:

"Where the only evidence against a defendant is evidence of identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favorable and free from possibility of error before it can safely make it the basis of a conviction."

76. I have considered the evidence of PW4 with the greatest care in order to satisfy myself whether it was safe and free from error. PW4 said that he knew the accused before but he did not give the actual number of times he saw the accused before the date in question. On the day in question, he said that he saw him at 9am. That was the day he last saw the deceased alive. None of the other prosecution witnesses said they saw her on 29th.

77. PW4 described the deceased's house as a bedsitter, with nothing inside to block the view. PW4 said he had a conversation with the deceased in which she asked him to come back the next morning so that she could give him money to pay her electricity bill. Even though the circumstances of identification by PW4 were conducive for positive identification, being at 9am and therefore in broad daylight, the evidence of DW2 cannot be ignored.

78. The defence adduced evidence to negate the fact that the accused was at the deceased's house on 29th May 2008. The accused himself relied on alibi defence, that he was not present at the deceased's house, not on the day she may have died, or ever. His witness, DW2 testified that he went to visit the deceased on 28th May 2008 at about 5.00 or 6.00 pm. He stated that he spent the night there and left the deceased's house the next day on 29th May 2008 at 11.00 am. Further, DW2 stated that he had visited the deceased on four different occasions prior to her death. He however stated that he did not know the caretaker of the building where the deceased lived.

79. I considered the demeanour of this witness (DW2). The moment he started giving evidence I noted that he started sweating profusely, was uneasy and shaky. Out of concern I asked him if he was okay to testify which when he answered in the affirmative, I then offered him a seat, which he accepted. I found the demeanour of this witness wanting. However, since the reason of his shaking and sweating was not interrogated in court, I cannot make an adverse inference. There could be an innocent explanation for his condition.

80. This position is buttressed by the fact DW2 wrote a statement three days after the body of the deceased was discovered. He made same admissions as he did in his testimony that he had been with the deceased up to 11am on 29th May, 2008. That was two years before the accused was arrested. This rules out the possibility of DW2 having entered into an arrangement with the accused over this matter.

81. PW4 stated that he went to the deceased's house on 29th May 2008 at 9.00 am and saw the accused inside the deceased's house. PW4 stated that the accused was the only man who visited the deceased. If it is true that DW2 was with the deceased in her house on 29th May 2008 up to 11am, then he was the man PW4 saw with the deceased at 9.00 am that morning. If that is the case, the only conclusion to make is that PW4 was either mistaken or was lying.

82. There was also another issue raised by the defence regarding the evidence of PW4. The failure to mention that he saw the accused or a man in the deceased's house on 29th in his statement to the police. All PW4 stated was that the police had concluded it was a case of suicide. The line of questioning of PW4 by the police, gleaning from the statement recorded from PW4, marked by the defence, shows clearly that he made no mention of the deceased having company on the morning of 29th. That should have been a very important matter which he should have told the police about if he did see someone with the deceased's during her last moments. In the circumstances, I find that it is a serious omission for PW4 to fail to mention seeing the accused in the deceased house on the material day.

83. Mrs. Chepseba urged that PW4 was an incredible witness because of lack of corroboration for his evidence. Counsel took issue with failure of PW8 to mention seeing PW4 at the scene when the deceased body was recovered. PW8 was clear that he was not the investigating officer and that he was not observant at the scene. His role was to present the accused to the DCIO and possibly return with him. He explained that Thika Police Station had also requested the accused be taken to their station, which he did the same day.

84. PW6, the investigating officer mentioned being with PW4 at the scene of crime and said that he secured someone to break into the house

for them and was present throughout the scene visit. PW6 said that PW4 had reported to them at Kamukunji Police Station of a foul smell from the building, and that it was after that report, and the one made by a relative of the deceased (PW5) that they proceeded to the building. Furthermore, PW4 mentioned the shouting relative of the deceased at the scene when the body was found, which was her half-brother PW5. PW5 also mentioned that PW4 was present when the door to the deceased house was being opened. Nothing turns on this point.

85. The defence challenged the evidence of PW4 where he said that the accused identified him to the police as one Maina, Caretaker of the building in 2010. The challenge was that no police officer supported that evidence. PW8 testified that the accused led them to room 207, where deceased lived, and that someone opened the house for them. That evidence by PW8 is inadmissible as the visit to the scene was not preceded by a written admission or confession as prescribed in the Evidence Act, Section 25A thereof.

86. I am satisfied that PW4 was at the scene when the deceased body was recovered. He is also the one who reported the deceased missing, and also reported a foul smell coming from her house to the police. That report was made before police visited the scene. However, for the reasons contained herein above, the contradiction of his testimony of the events of 29th May, 2008 by DW2, and the omission to disclose seeing a man with the deceased on the same day, I find PW4 an unreliable witness.

87. The other evidence the prosecution relies on is the handwriting evidence. Mrs. Chepseba urged the court to find, as accused alleged, that PW6 did not take the sample handwritings properly. She urged the court to recall earlier submissions where counsel urged that the 'process applied is more important than the result obtained'. Counsel urged that PW6 confirmed that he did not follow laid down procedures. Counsel urged that PWl0**,** the Document Examiner stated in Court that the handwriting samples should be obtained through dictation, and that known handwriting be also obtained properly, in default the same is inadmissible. Mrs. Chepseba urged the court to rule that **Police Force Standing Orders Section 26(i)-(iii)** were violated yet coached in mandatory terms. She urged the court to give the accused the benefit of doubt, as is the law.

88. PW10 testified that he did a comparison analysis of the three sets of specimen handwritings [P. Exh. 1 (a) to (d), 2 (a) to (d) and 3 (a) to (d)] and the questioned writings [P. Exh. 4 (a) and (b)], and was able to pick characteristics and letters that were similar between them.

89. PW10, in answer to the defence stated that he did not ask for known handwritings of the accused since they are not mandatory, and because the specimen provided were sufficient to reach a conclusion. He also stated that the delay in carrying out the examination was due to lack of personnel, there being only one Document Examiner in the country. He stated that the delay in question was of three years and said that it did not affect the results as the exhibits that were to be examined were well preserved. He produced his Report dated 2013 as P. Exh. 6, and the Exhibit Memo Form a 6 (a).

90. I noted the challenge raised to the evidence of PW10 was not on the examination he carried out, but on the process through which the samples he used to carry out his analysis were collected. It is the defence submission that the **Police Force Standing Orders, Section 26(i)-(iii)** were not adhered to. The Rules applicable to this case are **Police Standing Orders, Revised Edition 2001.** Under these Rules, Chapter 46 thereof is titled 'Guide to criminal investigations'. **Section 26** stipulates as follows:

> **i. all the documents which are required to be examined for handwriting or typewriting comparisons should be forwarded to the Director of Criminal Investigation, for the attention of the Document Examiner…**
>
> **ii. When forwarding documents, it is essential that:-**
>
> > **a. a specimen of the suspect's writing or typing is enclosed for comparison with that on the document in question. The specimen should include the same words and figures as are contained in the original, repeated several times to facilitate examination,**
> >
> > **b. if the suspected document is written in ink, the specimen should also be written in ink. If a ballpoint pen has been used, the specimen should be written with the same type of pen, and so on. If possible, the same type of paper should be used for the specimen as was used for the original document,**
> >
> > **c. when a suspect is asked to provide a specimen the investigating officer will dictate the words and/or figures at various speeds to prevent the suspect from attempting to disguise his/her handwriting or typewriting.**
>
> **iii. When looking for specimens, it should be borne in mind that these can, in many cases, be obtained from the suspect's place of employment; the school where he/she was educated or received further education (evening continuation classes-business colleges- correspondence courses, etc); or from persons with whom he/she has been in correspondence.**

91. PW6 told the court that the questioned writings were written on the bathroom wall with a marker pen, and that he had them photographed by a Crime Scene Officer. He admitted in cross examination that the sample writings he took from the accused were written on a paper using a blue pen. He admitted that he did not get any known writings of the accused, explaining that the accused did not cooperate. The question is whether the **Rule 26 (2)** of the **Forces Standing Orders** were flouted and whether that is fatally defective.

92. The Rule in question provides a guide in two forms, mandatory and permissive terms. The mandatory terms are:

> **a. The specimen should include the same words and figures as are contained in the original, repeated several times;**
>
> **b. the specimen should be written with the same type of pen;**
>
> **c. When looking for specimens, it should be borne in mind that these can, in many cases, be obtained from the suspect's place**

of employment; the school where he/she was educated or received further education (evening continuation classes- business colleges- correspondence courses, etc); or from persons with whom he/she has been in correspondence.

93. The permissible ones are:

a. If possible, the same type of paper should be used for the specimen as was used for the original document;

b. when a suspect is asked to provide a specimen the investigating officer will dictate the words and/or figures at various speeds to prevent the suspect from attempting to disguise his/her handwriting or typewriting.

94. Regarding the complaint by the defence counsel, it was admitted that no known writings were presented to the Document Examiner along with the specimen and questioned writings. This is one of the terms under the Rule that is coached in mandatory terms. The failure to present the known writings of the accused was not explained. PW6 merely said that the accused did not cooperate. That is not sufficient to explain failure to comply with this rule. PW6 should have demonstrated efforts he made to get any such writings.

95. Even though the Document Examiner said luck of the same did not affect the outcome, Rules are made to be kept, not broken. There is a reason that rule was formulated, and it has to do with the fact that it is desirable for the Document Examiner to see other writings of the suspect made in different environment other than during investigations. Failure to provide these writings denies the suspect added precaution and therefore a fair process.

96. On the issue of the same paper, this one is permissible, given the words used 'If possible, the same type of paper should be used for the specimen as was used for the original document.**'** The Rule is not coached in mandatory terms. In this case, the questioned writings were on a wall, not paper. In the circumstances, I would not blame PW6 for taking samples writings on paper from the accused for the reason it would not have been practical to use a wall to do so.

97. The Rule on dictation may appear like it gives the Investigating Officer discretion to decide whether to dictate or not the writings for the accused to write. The word 'will dictate' suggests as much. However, considering the mischief intended to be prevented mentioned under the sub-rule, I am persuaded that dictating is the better option required under that sub-rule. I must mention here that the Rule requires for the sample writings to be *repeated several times to facilitate examination.* What was provided to the Examiner were three papers of sample writings for each set of writings required. I am not satisfied that these were sufficient to facilitate examination. Not to mention that since the accused was asked to copy, it was imperative that the exercise was repeated several times to prevent the mischief mentioned of attempt to disguise the writings.

98. There is a more serious issue which begs consideration by this court. The issue of whose writings should have been forwarded to the Document Examiners for examination. That was the decision which PW6 as investigating officer should have made. I know that the Constitution 2010 became law after the accused had been arraigned in court. None the less, an investigator was expected even then to carry out a reasonable and fair investigation. Was this done?

99. Rule 26 supra, provides that when forwarding documents, it is essential that a specimen of the suspect's writing or typing is enclosed for comparison with that on the document in question. In this case who should have been the suspects? The very first one was the deceased herself because what was being investigated was '*her suicide note'*. The other suspects were DW2 and PW7. DW2 admitted to the police he had been with the deceased in her house up to 11am on 29th May. PW7 spoke on phone with her at 10pm that night. Investigations is about gathering all relevant, necessary and important evidence which is then analyzed. What is found unnecessary is surrendered to the defence.

100. Why were the known writings of the deceased, the sample and known writings of PW7 and DW2 not collected for examination by the Document Examiner? The only conclusion the court is entitled to make is that the investigations were not thorough at the least, or manipulated at the worst. Whichever the case may be, PW6 denied PW10 an opportunity to carry out a holistic, inclusive, evocative and critical scrutiny of all relevant documentations to enable a more complete and gratifying result. What we have of the results of the exercise by PW10, through no fault of his own, is so lopsided that it is incredible and of no probative use to this case.

101. As I have stated herein above on the issue of pathologist's evidence, generally opinions by experts who include handwriting experts are not binding on the court. The court is entitled to reject the opinion if cogent reasons exist to do so. In this case, for reasons I have given herein, it is my view that the Document Examiner did not have all the required specimen to enable him arrive at a holistic and balanced opinion. Handwriting examination is not based on scientific testing, so that one can say, on application of certain specific parameters, the result will be the same. It's not like DNA sampling or finger print examination. Having said that, by reason of the various flaws involved during the collection or lack of it, and delivery of the sample writings of the accused, I find the end result hazy to rely on.

102. Before I conclude I must mention, in addition to what I said earlier, that the investigations into this case was wanting. PW3 said he could not remember the date he stood in for Ndichu. It was so easy to resolve this by availing Ndichu to testify. That was so critical as it may have resolved many issues in this case including whether the PW3 entertained the visitor in question the same night before the deceased was found dead. That was not done.

103. The other issue has to do with the phone No. 071218347. PW5 testified that the deceased called him using that line which was not hers. She told him it was for one, Philip with whom she was enjoying the evening. PW5 said that when he could not get the deceased on the 30th May, he called the line and a person who answered to the name Philip answered it. The police did not investigate this line to find out whether it had any connection with the accused.

104. That investigation was critical given the evidence of PW8, that the accused was arrested with a phone and sim card of a line that was demanding ransom for a missing child. This line that was found from the accused was not even disclosed to the court. That was poor exercise of investigative powers.

105. All these are disheartening omissions. The worst being failure to investigate a stain on the deceased's door, captured by the Crime Scene Officer in his photo of the scene produced as P. Exh. 4(a). Why would the police not follow this line of investigation, especially because it was the key to unravel whether the deceased committed suicide or not with certainty? If it was found to be the blood from the deceased, due to its location, the obvious conclusion would be that it was a third party who stained the door after causing injury to the deceased from which she bled.

106. I find that the prosecution did not adduce evidence sufficient to cogently and firmly establish the circumstances from which the inference of guilt was sought to be drawn. The evidence adduced fell far below proof on the required standard of proof of beyond any reasonable doubt. I am convinced that the deceased may have been murdered for reasons I gave in this judgment. However, there is no evidence that unerringly points to the accused as the author of her death.

107. As to the last issue whether the accused alibi defence stands. The law on alibi defence is that the accused need not prove his defence. All he needs do is raise doubt as to the veracity of the prosecution evidence.

108. DW2 exonerated the accused as being the person PW4 claims he saw in the deceased's house at 9am of 29th May, on the morning of the day he last saw her alive. PW7 threw in more spanners in the works when he put 10pm on the 29th May as the last time he spoke to her on phone. That was in fact the reason police gave him for requiring his statement. Given DW2's evidence, there is doubt that it was the accused that PW4 saw in the deceased's house as alleged. I find that the prosecution case that the accused was with the deceased on morning of 29th May was put to doubt. In the circumstances I find that the accused alibi defence stands.

109. Before I end I wish to thank the counsels in this case. In particular, I thank Mrs. Chepseba for agreeing to represent the accused in this case. It took this court several weeks to get counsel to represent him. Many turned down the request including in open court in the presence of the accused and other parties. Mrs. Chepseba did not disappoint, and she represented her client with vigour throughout the trial.

110. I think that the lesson we learn from this is that we should give every human being their right as guaranteed in the Constitution, whoever they may be, whatever is believed they may have done. After all, all that the Courts do is to give verdicts. Judgment belongs to God. He is the true judge. He acquits, He convicts, He gives appropriate vengeance to those victimized, and most importantly, He decides the fitting punishment in each case, and does not need the Court to do so.

111. In conclusion, I find that for the reasons given in this judgment, the prosecution did not prove their case of **murder** contrary to **Section 203** of the **Penal Code**, against the accused. Accordingly, I give him the benefit of doubt and acquit him under **Section 322** of the **Criminal Procedure Code** accordingly.

DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF JULY, 2021.

LESIIT, J.

JUDGE

In the presence of:

Kinyua - court assistant

Ms. Gichuhi for the State

Mrs Chepseba for the accused

Accused present

LESIIT, J.

JUDGE