



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MARSABIT

CRIMINAL CASE NO 5 OF 2020

REPUBLIC.....PROSECUTION

VERSUS

BERNARD GACHAU.....ACCUSED

JUDGMENT

1. Bernard Gachau (herein referred to as the accused) is 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 on the 28th day of October 2017 at around 1900 hours at North Horr Police Station in North Horr sub-county within Marsabit county he murdered one Ali Soraya Bonaya (herein referred to as the deceased).

The Prosecution Case -

2. The case for the prosecution was that the deceased was a resident of North Horr township in Marsabit county while the accused was a police officer then stationed at North Horr police station. That on the afternoon of 28th October 2017 the deceased and his friends, Ahmed Rakaw PW4 and Hussein Abdullahi Malicha PW5, were relaxing at North Horr Police Station canteen. The deceased was drinking beer and by the evening he was drunk. Hussein PW5 left the canteen at 6pm and went home.

3. That at 7pm there were many people gathered at the canteen to watch the evening news. It was during the time of the repeat presidential election of 2017. Those in the hall included police officers and civilians. Among the policemen were the accused and Sergeant James Mulwa DW2, who was the in-charge of police lines and discipline at the police station. The civilians included Kalicha Yatani Salesa PW1 and Ahmed Rakaw PW4 who were outside the hall and Elijah Muriithi PW2 and Wario Tura PW3 who were inside the hall. That the deceased started to shout at a loud voice thereby disturbing those who were keenly following the news. Sergeant Mulwa ordered the accused to remove the deceased out of the hall. The accused held the deceased and removed him out.

4. It was the evidence of **Kalicha Yatani PW1** that he was chewing miraa outside the entrance to the hall. That he saw the accused frog marching the deceased out of the hall. That when the two reached outside the accused double slapped the deceased on both sides of the head. That the deceased cried out to him that he was being killed. The accused hit the deceased with one more slap and the deceased fell down. The accused then stepped on the deceased's abdomen. PW1 shouted at the accused. Other people went to the place and the deceased was escorted away. That on the following day at midday the deceased met him in the company of other people at the same canteen. The deceased told him that he could not hear properly and that he was in pain. The deceased went to make a report to the police. He came back and told them that the sergeant had told him that he was going to church and had told him to go back at 2pm. On the following day he received a report that the deceased had died.

5. **Muriithi PW2** testified that on the material day at 7pm he was watching the evening news at the police canteen. That the deceased was drunk and was shouting. That the police "major" ordered a policeman to remove the deceased out of the hall. The policeman held the deceased by his trousers and started to march him out. That after about 5 meters the deceased refused to move and sat on the ground. The policeman slapped him on both sides of the face and hit him with his boots on the ribs. He, PW2, told a lorry driver who was in the hall (PW3) that the deceased was being beaten. The lorry driver came out of the hall and pleaded with the policeman to stop beating the deceased and he heeded. That on the following day he met the deceased at the canteen. He told them that he had tried to record a statement with the police but that he was told it was church time. On the following day he heard that the deceased had died.

6. The lorry driver, **Wario Tura PW3**, testified that he was at the time watching the evening news at the police canteen. That his friend the deceased was in the hall and was drunk. He was shouting. A police officer called Mulwa instructed the accused to remove the deceased out of the hall. The accused held the deceased by the hand and removed him out quietly. That a person called "Okola" (PW2) then shouted that the deceased was being beaten. He, PW3, came out of the hall and found the deceased lying on the ground with the accused stepping on him. He pleaded with the accused to stop beating him. The deceased complained that he had been injured and he (the deceased) later went home. That on the following day at midday he was at the canteen with other people. He saw the deceased at the said place. The deceased told him

that he wanted to report the beating to the police. He went to report but went back and told him that the sergeant had gone to church. That the sergeant came back while they were there. The deceased went to report but he came and told them that he had been told to go back on the following day.

7. **Ahmed Rakaw PW4** testified that at the material day he was at the police canteen in the company of the deceased. That at 7pm he entered into the hall to watch the evening news. That after a few minutes the deceased entered into the hall. He commented on something loudly about the news bulletin. Sergeant Mulwa told the accused to remove the deceased out of the canteen. The accused held the deceased by his hand and removed him out. That after about 4 minutes he heard some commotion outside with PW3 saying "do not beat him again." He went out and found the deceased lying on the ground. PW3 was asking the accused why he was beating the deceased. The deceased was complaining that he could not hear. That the "major" came out of the canteen and he (PW4) told him that the deceased wanted to report. The "major" told them to report on the following day as it was late at night. That on the same night the deceased went to his house around 11pm. The deceased removed his clothes and he saw some footprints on his body. On the following day the deceased passed by his house and said that he was going to report the incident to the police. He followed him to the police station. He found him outside the station and he told him that the police officer had gone to church and that he was to report at 2pm. He left him there. On the following day he heard that the deceased had passed on.

8. It was further case for the prosecution that before the deceased died he reported to several people that he had been assaulted by a policeman at North Horr police station and that his attempts to report the incident at the police station was rebuffed by policemen. The deceased's **father PW6** told the court that on the evening of the material day the deceased went home and complained that he had been assaulted by a policeman. That as he talked to him, he (the deceased), held the side of his ribs and fell on the ground in pain while saying that he was dying. The deceased slept at his house. On the following day the deceased went to report to the police but that on coming back he said that policemen had refused to take his report. That he died on the following day, 30th October 2017.

9. A friend to the deceased, **Ali Muda PW7**, testified that on the morning of 29/10/2017 the deceased went to him and told him that he had been assaulted by a policeman at North Horr police station and that he was injured on the ears and ribs. He requested him to escort him to the police station to make a report. He accompanied him to the police station. They found sergeant Mulwa within the police station and they entered with him into the office of the OCS. The deceased informed the sergeant on what had happened. The sergeant said that he was going to church and that he would take the report after he came back from church. PW7 left the deceased at the police station and went away. On the following day he received a report that the deceased had died.

10. A cousin to the deceased, **Sabidio Galgalo PW9** testified that the deceased went to her home on the evening of 29th October 2017 at 6pm and told her that he had been assaulted by a policeman. That his effort to make a report of the incident had been declined by policemen. That he was complaining of pain on the head, left ear and on the back. He requested her to escort him to the police station on the following day to make a report. The deceased slept at their house. On the following morning she went to work. At midday she was at home when she received a report that the deceased had collapsed in the boys` room. They took him to hospital but was pronounced dead.

11. **Ali Kalelo Wata PW10** who is the Ward Administrator for Maikona ward testified that he met the deceased on the morning of 29/10/2017 in the company of Ali Muda (PW7). The deceased told him that he had been assaulted by a police officer on the previous night at North Horr police station. That he was hit on the head and abdomen. He had difficulty in hearing. He advised him to report to the police. On the following day he heard that the deceased had passed on.

12. The **Assistant Chief** of North Horr sub-location PW11 testified that he also met with the deceased on the morning of 29/10/2017 in the company of Ali Muda (PW7). The deceased told him that he had been beaten by a police officer on the previous night at North Horr police station. He advised him to report to the police. He went to church. On the following day he received a report that the deceased had died.

13. Another cousin to the deceased **Abudho Galgalo PW13** who is sister to PW9, testified that the deceased's father is his uncle. They live at the same place. That at times the deceased used to sleep at his (PW13's) house. That on the evening of 28/10/2017 the deceased went to his house and informed him that he had been assaulted by a policeman at North Horr police station. He complained of pain on the head, ears, chest and on the back. He slept with him in his house. On the following morning the deceased left the home and said that he was going to make a report with the police. He came back at 7pm and told him that policemen had refused to take his report. He slept with him in his house. On the morning of 30th he still looked sick. He took him to the bathroom and bathed him. He noticed that he had bruises on the back and on the chest. He returned him to bed. At midday he found him having collapsed in the room. They took him to hospital but he was pronounced dead.

14. A nurse at North Horr Health Centre **Boku Bagaji PW12** testified that on the 30/10/2017 the deceased was taken to the health centre. She examined him and found him to have already died. She observed that the body had bruises on the back. The body was released to the relatives.

15. The then OCS of North Horr police station, **Sgt Rashid Juma PW17** told the court that on the 30/10/2017 at around 2pm he was at the police station when the area Member of the County Assembly accompanied by other people went to the station and reported that the deceased herein had died after he was beaten by a police officer. He was not told the name of the police officer. He booked the report and went to North Horr Catholic Hospital where he found the body lying in the ward. He made arrangements for the body to be escorted to Meru County Referral Hospital for post mortem examination. Sgt Timothy Kilonzo PW15 and Cpl Oyamo PW16 escorted the body for postmortem in the company of the deceased's relatives who included Umuro Salesa PW8. The postmortem was performed by one Dr. Michael Ongas who found the body with a depressed skull fracture on the right temporal region; scalpular hematoma over right temporal region; collection of blood in the epidural space of the right side of the brain; bleeding from the nose; bruises on the front region of the left thigh; abrasion over the left lung and collection of fluid in the right lung; ruptured spleen; laceration on posterior aspect of the left liver lobe; abscess formation on superior aspect of the right lobe; collection of fluid in the pouch of Douglas and inflamed ascending colon. The doctor formed the opinion that the cause of death was due to epidural hematoma secondary to blunt force injury.

Later Ass.SP Rashid PW17 handed over the post mortem report and the investigation file to the office of the DCIO. The case was thereafter

taken over by the Independent Police Oversight Authority (IPOA). PW17 also handed over the station's duty roster of 21/10/2017 to 29/10/2017, Pexh.3, which showed that the accused was on duty on the 28/10/2017 on the third shift that runs from 2200 hours to 0600 hours.

16. **Christopher Ogega PW18** who is an investigator with IPOA testified that he took over the investigations on the 8/12/2017. That he was handed over the post mortem report by one Elema Tura who had been referred to their office by the Kenya Human Rights Commission. That on the 17/1/2018, he and a colleague travelled to Marsabit. They recorded statements from witnesses -PW1 to PW16 and from Sgt Mulwa DW2. He also recorded a statement under inquiry from the accused. They visited the scene of the incident. Their investigations revealed that the accused double slapped the deceased on the cheeks causing him to fall down and stepped on his chest, abdomen and hip. That the assault was without provocation. They recommended that the accused be charged with murder. He was charged accordingly. During the hearing, one **Dr.Maria Muthoni Mwangi PW14**, produced the post mortem report as exhibit, **DExh.1**, on behalf of Dr. Ongas who was unavailable to attend court to produce the same.

Defence Case -

17. After the close of the prosecution case the accused was put on his defence. He gave sworn testimony and called 3 witnesses. His evidence was that on the 28/10/2017 at 7pm he was watching the evening news at North Horr police station canteen. That there were other police officers who were present who included Sgt Mulwa, Chief Inspector Robert Masila and PC Oyamo. That the deceased staggered into the hall while holding a glass of beer. He stood in front of the television thereby blocking it from viewers. He was at the same time talking in a loud voice. Sgt Mulwa who was his senior instructed him to remove the deceased out of the hall. He held the deceased's hand and escorted him out. He did not resist. He left him about 3 meters from the door. The deceased went away. He went back to watching the news. He denied that he assaulted the deceased. He said that he was not holding anything when he removed him out. He confirmed that Pw1 was outside the canteen when he removed the deceased out.

18. It was further evidence of the accused that he was not on duty at the material time. That according to the duty roster PExh. 3 he was on duty in the third shift that starts at midnight and ends at 8 am. That on 29/10/2017 he was at the police canteen at 7 am with Cpl Oyamo when the deceased went there. He asked Oyamo to show him the house of "major" (Sgt Mulwa). It was pointed out to him and he went towards the place. He went back to the canteen and continued to drink there up to 5pm.

19. **Sgt James Mulwa DW2** testified that he was in charge of the armoury, lines and discipline. That on the material day he was watching news at the police canteen. That the deceased entered into the hall while holding a glass. He stood in front of the TV and blocked it from viewers. Those who were at the back started to complain. He ordered the accused to remove the deceased out. The accused held the deceased at the wrist and removed him out. The deceased did not resist. He did not hear of any commotion outside. The accused went back after removing him out. That on the following day at 10 am he was at his house when the deceased went to him. He told him that he wanted to talk to him about his junior officer. He told that he was going to church. He instructed him to go back after he had come from church. He went to church. He went back at 1.30 pm. At 2 pm the deceased found him at the office of the OCS. He was drunk. He asked him why he was drunk. He told him to go back on the following day when not drunk. The deceased went away. He confirmed that a teacher (PW1) was outside the entrance when the accused removed the deceased out. He also confirmed that Muriithi (PW2) was inside the canteen when the deceased was removed out. He later recorded a statement with the DCIO and IPOA.

20. **C.I. Ernest Mua DW3** who was the DCIO North Horr told the court that he took over the investigations of the case from the OCS North Horr on the 30/11/2017. That the OCS had not recorded any statement in the case. He recorded the statements of about 18 people. That of them only Kalicha Yattani Pw1 said that he saw the accused slap the deceased. That the rest of the statements were heresy. An inquest file was opened. He bonded witnesses but they never turned up in court. He later learnt that the inquest file was withdrawn and the matter taken over by IPOA.

21. **PC James Koome DW4** testified that he is stationed at North Horr police station. That on the material day he was on duty at the police station as a station guard. That at 7pm he was watching the evening news at the police canteen. He was standing at the wall of the hall. That the accused and Sgt Mulwa were watching the news inside the hall. The deceased went there while holding a glass of beer. He was drunk. He blocked the TV. The viewers complained. Sgt Mulwa told the accused to remove the deceased out. The accused held the deceased's hand and removed him out. That a teacher by name of Kalicha was outside the entrance. He talked to the deceased in their dialect. The deceased then said that it was okay and he went away. The accused returned into the hall. He said that did not see the accused assaulting the deceased.

Submissions –

22. The advocate for the accused, **Mr. Kariuki**, submitted that the charges against the accused were not proved beyond reasonable doubt. That there is serious doubt as to what transpired when the deceased was removed out of the hall. That PW1 could not explain how the accused double slapped the deceased while the accused held the deceased by one hand and a gun on the other hand. That his evidence was challenged by DW4 who was also outside the canteen and did not see any assault incident.

23. Counsel submitted that the prosecution witnesses PW1-4 gave different descriptions of the person who assaulted the deceased. That PW1 and PW2 said that the person was dressed in police uniform and armed with a gun. That PW3 and PW4 said that the person was dressed in a T-shirt and police shoes and did not mention any gun. That the fact that these witnesses gave different descriptions of the person who assaulted the deceased leads to the conclusion that the circumstances obtaining at the time could not favour a positive identification of the assailant.

24. It was submitted that there was contradictory evidence as to where the deceased spent the night after the incident with his father PW6 saying that he spent the night at his house while PW13 was emphatic that the deceased spent the night at his (PW13's) house. It was further submitted that the investigating officer did not visit the house of the deceased's father where the deceased was said to have thrown himself to the ground and rolled on hard surface. That it cannot be ruled out that the deceased sustained the fatal injury at that time.

25. It was submitted that the prosecution did not explain the whereabouts of the deceased between the time he left the canteen on 28/10/2017 after the 7 pm news bulletin and 9 pm when he appeared at the house of PW6.

26. Counsel submitted that PW12, PW15, PW16 and PW17 saw the body soon after the death and they did not see any visible injuries. That the post mortem report indicated that the depressed skull, bleeding from the cheek and bruises on the left thigh were visible on the external part of the body. That the question that arises is whether the injuries and particularly the depressed skull could have been inflicted after the deceased's death. That it is doubtful whether the deceased died of injuries inflicted on 28/10/2017 as alleged by the prosecution or injuries inflicted on a later date.

27. Counsel submitted that the postmortem report produced in court PExh.1 is a photocopy and is not certified. That there was no explanation why the copy was not certified either by the police or the hospital where it was filled. That the document is not admissible in evidence as it offends the provisions of section 67 and 68 of the Evidence Act.

28. The prosecution counsel **Mr. Ochieng** on the other hand submitted that the prosecution had proved the charge against the accused beyond all reasonable doubt. That the evidence was cogent and proved that the accused assaulted the deceased without any provocation. That the accused was identified by PW1, 2, 3 and 4 who were familiar with policemen stationed at the station. That the accused in his defence admitted that he accosted the deceased on the material night.

29. It was submitted that the assault on the deceased was corroborated by the postmortem report. That the deceased told several people including PW1,2,3,4,5,6,7,8,10,11,12 and 13 that he had been assaulted by the accused. That this amounted to a dying declaration which evidence is admissible under section 33(a) of the Evidence Act which section provides that –

Statements, written or oral or electronically recorded, of admissible facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot be procured, or whose attendance cannot be procured, without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable, are themselves admissible in the following cases—

(a) relating to cause of death when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are admissible whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

30. It was submitted that the defence evidence did not displace the evidence for the prosecution. That the discrepancies alleged by the defence against PW1-4 are not fatal errors in the case. The prosecution counsel urged the court to find that the ingredients of the offence of murder which are *actus reus* and *malice aforethought* have been proved. He urged the court to convict the accused of the offence of murder as charged.

Analysis and Determination –

31. The accused is facing a charge of murder contrary to section 203 of the Penal Code which section provides that:

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

32. The elements that have to be proved by the prosecution in a charge of murder are *mens rea*, that is, the guilty mind and *actus reus*, that is, the guilty act that causes the death. The standard of proof required is that of beyond reasonable doubt. In the case of **Joseph Kimani Njau v Republic (2014)eKLR** the Court of Appeal stated that:

“In all criminal trials, both the actus reus and the mens rea are required for the offence charged; they must be proved by the prosecution beyond reasonable doubt. The trial court is under a duty to ensure that before any conviction is entered, both actus reus and mens rea have been proved to the required standard.

33. In **Anthony Ndegwa Ngari v Republic (2014) eKLR** the Court of Appeal identified three crucial ingredients of the offence of murder that have to be proved for a conviction to be entered. Said the court -

For the offence of murder, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are

(a) the death of the deceased and the cause of that death

(b) that the accused committed the unlawful act which caused the death of the deceased and

(c) that the accused had the malice aforethought.

I will then consider these elements of the offence to determine whether the prosecution has proved the charge against the accused beyond reasonable doubt.

34. There is no doubt as to the death of the deceased in this case. The nurse at North Horr sub-county hospital, PW12 examined the deceased when he was taken to their health facility and found him already dead. Several witnesses saw the dead body of the deceased at the health facility. The death was confirmed by the doctor who conducted the post mortem report. The fact of the death of the deceased has therefore been established.

35. According to the doctor who performed the postmortem, the deceased had sustained, *inter alia*, a depressed skull on the right temporal region. The doctor formed the opinion that the cause of death was due to epidural hematoma due to blunt force injury. There was no challenge on this evidence. I therefore accept it as the cause of death of the deceased.

36. Apart from the injuries on the head the deceased also sustained a ruptured spleen, abrasion over the left lung, laceration of the left liver lobe, abscess formation on superior aspect of the right liver lobe, fluid in the pouch of Douglas and inflamed ascending colon.

37. The question before the court is whether the accused assaulted the deceased as a result of which he succumbed to the injuries sustained. The witnesses who claimed to have seen the accused assault the deceased were Kalicha Yatani PW1, Elijah Muriithi PW2 and Wario Tura PW3. PW1 stated that he saw the accused double slap the deceased on both sides of the head, gave him one more slap upon which the deceased fell down and the accused stepped on his abdomen. PW2 stated that he saw the accused slap the deceased on both sides of the face and then hit him with his boot on the ribs. PW3 stated that he came out of the hall after he was told by PW2 that the deceased was being beaten and he found the deceased lying on the ground. He saw the accused slapping the deceased once and kicking him with his legs. Ahmed Rakaw PW4 said that he went to the scene after he had heard some commotion outside and found the deceased lying on the ground. I find the evidence of Pw1, 2 and 3 that they saw the accused beating the deceased to be cogent and credible. They were independent witnesses who had no reason to lie on the issue. Their evidence that the deceased was assaulted is supported by the findings of the doctor who performed the postmortem on the body of the deceased. I do not believe the evidence of the accused's witnesses, DW3 and 4 that the accused never beat up the deceased. It is clear that the two were out to cover up their colleague.

38. Having found that the accused assaulted the deceased, the question is whether the deceased died as a result of the beating meted out on him by the accused. The fatal injury that caused the death of the deceased was a blow on the head. The blow was so heavy that it caused the deceased to sustain a depressed skull. None of the three prosecution witnesses who saw the accused beating the deceased saw him hit the deceased with a heavy blow on the head as to have caused a depressed skull. Yatani PW1 was close to where the deceased was being beaten by the accused and he never saw the accused inflict the deceased any blow on the head. He only saw the accused slapping the deceased and stepping on his abdomen after the deceased had fallen down.

39. Muriithi PW2 said that he saw the accused slap the deceased and kicked him with his boots on the ribs. Wario PW3 said that he saw the accused slap the deceased and kicked him with his legs. Yatani PW1 who was there from the beginning said that the accused only stepped on the deceased's abdomen after the deceased had fallen down. I entertain no doubt that Yatani could not have missed to see the kicks as alleged by Muriithi and Wario. It would appear from the evidence of the three witnesses that the accused only administered a few slaps on the deceased after he escorted him out of the hall and stepped on his abdomen after he (the deceased) had fallen down. It is not clear whether the accused kicked the deceased on the abdomen as alleged by Muriithi as Yatani did not appear to have seen it. In my considered view, the mere slaps that the accused gave the deceased could not have caused the serious injury sustained by the deceased in the form of a depressed skull. It remains a mystery on how the deceased sustained the injury on the skull.

40. The case was investigated by IPOA. The investigator for the said body PW18 said that their investigations revealed that the accused only slapped the deceased and stepped on his chest, abdomen and hip after the deceased had fallen down. The witness did not explain how the skull fracture which was the cause of death of the deceased was sustained. Considering all the evidence adduced before the court I am not satisfied that the accused is the one who administered the fatal blow on the head that caused the death of the deceased. The ingredient for murder of *actus reus* has therefore not been proved.

41. The other ingredient for the offence of murder is malice aforethought which is the mental element for the offence. Section 206 of the Penal Code defines malice aforethought as follows:

(a) an intention to cause 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.

(c) an intent to commit a felony

(d) an intention by the act or omission to facilitate the fight or escape from custody of any person who has committed or attempted to commit a felony".

42. The Court of Appeal has dealt with the provisions of this section on several occasions. In **Nzuki vs Republic** (1993) KLR 171 it stated that -

Before an act can be murder, it must be aimed at someone and in addition it must be an act committed with one of the following intentions, the test of which is always subjective to the actual accused:

(i) The intention to cause death;

(ii) The intention to cause grievous bodily harm;

(iii) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from these acts, and commits those acts deliberately and without lawful excuse the intention to expose a potential victim to that risk as the result of those acts.

It does not matter in such circumstances whether the accused desires those consequences to ensue or not and in none of these cases does it matter that the act and the intention were aimed at a potential victim other than the one who succumbed.

Without an intention of one of these three types, the mere fact that the accused's conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into the crime of murder. See the case of *Hyam v Director of Public Prosecutions*, [1975] AC 55.

43. In **Tubere s/o Ochen v Republic** (1945) EACA 63 the court held that in determining whether the intention to kill has been established the court has to consider such things as the nature of the weapon used, the manner in which it was used, the gravity of the injuries inflicted, the part of the body targeted and the conduct of the accused before, during and after the incident.

44. In this case the prosecution has failed to prove that it is the accused who inflicted the fatal injury on the deceased with the intention to kill him or to cause him grievous harm. From my evaluation of the evidence the deceased died from something unrelated to the slaps administered on him by the accused. Malice aforethought has therefore not been proved on the part of the accused.

45. The upshot is that the prosecution has not proved the charge against the accused to the required standard of beyond reasonable doubt. I find the accused not guilty of the offence of murder and acquit him accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT MARSABIT THIS 13TH DAY OF OCTOBER 2021.

JESSE N. NJAGI

JUDGE

IN THE PRESENCE OF:

MR. OCHIENG FOR PROSECUTION

MR. KARIUKI & MR. HALAKE FOR ACCUSED

ACCUSED - PRESENT

COURT ASSISTANT - MR. KASHANE

14 DAYS RIGHT OF APPEAL.