REPUPLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HIGH COURT CRIMINAL CASE NO. 34 OF 2018

LESIIT J

REPUBLIC.....PROSECUTION

VERSUS

FREDRICK MMBALA MUSOTI.....ACCUSED

JUDGMENT

1. The accused **FREDRICK MMBALA MUSOTI** is charged with murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the charge are:

> **"On the 6th June, 2018 at about 9.00 p.m. in Kisumu Ndogo in Kibera, within Nairobi County murdered "MIRIAM NEKESA ALOYI"**

2. The brief facts of the prosecution case are that the deceased was the wife to the accused. They lived together with the two children and niece of the deceased, and a house help. The children slept in a single room used also as a sitting room and kitchen for the family. The deceased and accused slept in a single room not far from the children's room within Kibera.

3. On the fateful day, the accused demanded of the deceased that they go to sleep, which the deceased resisted. When the deceased declined the accused request, the accused warned the deceased of some untold consequences in the event he called out her name five (5) times. Upon the accused calling out the deceased for the 5th time, he suddenly unleashed a "panga" which he was carrying in his person, and used it to cut the deceased severally. He cut her on the mouth, head and other parts of her body. The accused thereafter left the deceased lying on the floor against the sofa set and ran away into hiding. He was arrested four (4) days later at his rural home in Western Kenya.

4. The accused gave an unsworn defence. He stated that he had been living with the deceased and her children for some time. He said that the two of them were having unending quarrels and fights prior to the incident. He stated that on the night in question, the deceased became violent when he asked her to accompany him to bed. The accused stated that the deceased pushed him and he fell over the cooker injuring his right arm. He further stated that soon thereafter, the deceased hang on his shirt as he tried to open the door. As they struggled at the door, the deceased tripped over his leg and she fell down. The accused stated that he took a flat sheet of iron and he hit the deceased with it. He explained that when the deceased started calling for help from the neighbours, he went outside the house and decided to stay away as he feared for his life having seen a group of youth gather around.

5. I have considered the evidence adduced by the prosecution as well as the accused own defence. I have also considered the submissions filed by both the prosecution and the defence.

6. The accused faces a charge of murder contrary to **Section 203** of the **Penal Code**. Under that section murder is defined as follows:

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

7. Malice aforethought is set out under **Section 206** of the **Penal Code** as thus:

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

II. 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;

III. An intent to commit a felony;

IV. An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony."

8. The ingredients for the offence of murder are well settled. The prosecution has to establish that the deceased died due to an unlawful act or omission on the part of the accused. Secondly, the prosecution must prove that at the time the accused committed the unlawful act or omission, he had formed the intention to cause death or grievous harm on the deceased. Thirdly, the prosecution must establish that the accused action caused the death of the deceased.

9. Having considered the evidence adduced in this case, and the submissions by counsels, I find that there are issues which are not in dispute in this case. These are:

i. There is no dispute that the accused was living with the deceased as man and wife,

ii. **That the deceased and the accused lived together with the deceased's two (2) children and her niece, and a house help in Kibera Kisumu Ndogo.**

iii. That at the time of the incident, the accused and deceased were both in the house used by the children, and were watching the television.

iv. That the accused and the deceased were involved in a scuffle in the course of which the deceased received injuries.

10. The issues for determination are the following:

i. Whether the accused person inflicted the injuries that caused the deceased death.

ii. Whether failure by the prosecution to recover and adduce the murder weapon is fatal to their case.

iii.Whether the prosecution has established that at the time of the incident the accused actions were actuated by malice aforethought.

iv. Whether the defence of self applies to this case.

11. **The first issue is whether the accused person inflicted the injuries that caused the deceased death**. The prosecution evidence was mainly based on the eye witness account of PW1, 2, 3 and 4. PW1 the house-help to the deceased, PW2 a niece to the deceased and PW3, the daughter of the deceased witnessed the incident on the fateful day. The three of them testified that the accused, the deceased and the three of them (witnesses) were all watching TV having just finished dinner. They stated that the accused asked the deceased to accompany him to bed so that they could sleep but the deceased declined the invite. PW1 stated that she heard the accused issue a warning to the deceased to the effect that if he, the accused called her, the deceased five (5) times without a positive response from the deceased, then she would suffer untold consequences.

12. PW1 stated that after the accused had called the deceased for the fifth (5) time, she saw the accused remove a panga from the back of his trousers and started cutting the deceased with it. PW2 and 3 on their part stated that after the deceased refused to accompany the accused to sleep, they saw the accused remove a panga from his clothes and use it to cut the deceased.

13. PW1 was 17 years old, the oldest of the eye witnesses inside the house of the deceased on that night. PW2 and 3 were children aged 12 and 9 respectively. The question is what is the probative value of the evidence of these witnesses and whether there was need for corroboration.

14. **Section 124** of the **Evidence Act, Cap. 80** of the Laws of Kenya provides as follows:

Notwithstanding the provisions of Section 19 of the Oaths and Statutory Declarations Act (Cap 15), where the evidence of the alleged victim is admitted in accordance with that section on behalf of the prosecution in proceedings against any person for an offence, the accused shall not be liable to be convicted on such evidence unless it is corroborated by other material evidence in support thereof implicating him.

Provided that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.

15. First of all, I have taken into account that according to PW1, 2 and 3, they were all home having dinner that night. After dinner the

accused started demanding of the deceased to join him to go to sleep before he called her five times otherwise, she would face it. True to his word, the deceased failed to obey him on the fifth call and he flashed out a panga from the back side of his trouser and cut up the deceased severally.

16. Going by the evidence of PW1 and the two children, the attack came after a meal of dinner was enjoyed by the family. No one left the house between the time the family ate their food and the time the deceased was attacked. The house was well lit with electric light and vision was clear according to PW1. PW1 had been working for the deceased for three months before this incident, and during that time, the accused was living with the deceased as man and wife. I find that PW1 was no stranger to the accused and the deceased. The incident occurred after the accused threatened the deceased with dire consequences few minutes before the incident. It is clear therefore that PW1 as well as PW2 and 3 witnessed the incident within the house where it occurred.

17. Considering the issue of corroboration. PW1 was 17 years old. She was of age. Her evidence was consistent. The circumstances of identification were safe being under electric light, in close quarters and after a lengthy period of eating and watching TV before the incident occurred. PW17 evidence did not require any corroboration given her age and the circumstances of identification. The evidence of PW2 and 3, being children required corroboration. I find that the evidence of PW1 provides the corroboration.

18. There was other evidence in this case which renders credence to the evidence of PW1 and that of the children, PW2 and 3. PW4 was an immediate neighbour to the accused and deceased. She stated that after hearing the screams and cries for help coming from the deceased house, she left her house and went to the deceased house. She said that she found the door locked. PW4 stated that her brother-in-law who had also followed her broke down the door to the deceased house. That is when PW4 saw the accused come out of the deceased house holding a panga. PW4 testified that when she realized that the accused had raised the panga aiming at her, she ran for her life. PW4 later returned to the scene and on viewing the deceased body, she noticed that the deceased had been cut on the mouth and her jaw was broken.

19. From the evidence of PW4, she got to the deceased house soon after the attack. She had been attracted to the scene by the deceased and the children's screams for help. After her in-law broke down the door, PW4 saw the accused come out of the deceased house charging with a panga in his hands. Even if PW4 did not witness the attack, what she saw confirms who had executed the attack. After chasing PW4 from the door, the accused left, never to be seen again until his arrest hundreds of kilometers away from the scene four days later. I find that the evidence of PW4 corroborated the evidence of PW1, and also that of PW2 and 3.

20. The evidence of the pathologist, PW6 who performed the autopsy on the deceased body found that the deceased had suffered multiple deep cut wounds. She found a total of 9 cut wounds on the head and the jaw and upper limbs including a severed wrist to her hand. PW6 formed the opinion that the cause of death was exsanguination due to sharp force trauma multiple to the head and upper limbs. PW6 also opined that the possible weapon used by the deceased assailant was a big object like a panga with a big cutting edge or an axe. The evidence of PW6 is consistent with the evidence of PW1, 2 and 3, and that of PW4 that indeed it was the panga they saw the accused using on the deceased, and carrying away as he left the scene which was the murder weapon.

21. The evidence of PW8 who took photos of the scene with the deceased body still at *locus in quo,* further confirms the evidence of the eye witnesses. He described the body of deceased as having been in a pool of blood. He stated that the body had two deep cuts on the forehead and one cutting the upper lip. He produced the photos as P.Exh4.

22. I have considered the accused defence. The accused in his defence does not deny being at the scene or having an altercation with the deceased just before the attack. He however denied using a panga or being armed with one. He stated that the deceased turned violent against him once he had asked her to accompany him to sleep. He stated that the deceased pushed him over as he tried to wake her up from the sofa and he fell over a cooker. The accused testified that soon thereafter, the deceased followed him and hang on him by his shirt and as he struggled to open up the door, the deceased tripped over his leg and she fell down. He thereafter took a flat sheet of iron and hit the deceased with it.

23. The accused confirmed he was the author of the attack on the deceased. He only denies having used a panga in the attack. The accused was seen by two adults, PW1 and 4, and two children with the panga he had just used to attack the deceased. PW1, 2 and 3 witnessed the attack. His denial is a lie as he was seen hacking the deceased before leaving the scene still carrying the panga with him. The injuries on the deceased were consistent with panga cuts, as confirmed by PW6 and PW8. The evidence against the accused is overwhelming. His denial cannot stand in the circumstances.

24. Having carefully considered the evidence of the prosecution and the defence, I find that it is not disputed the type of injuries that the deceased suffered. They were injuries occasioned by an object that had a cutting edge. The contention that the deceased used a flat iron rod to hit the deceased is a blatant lie as the injuries are not consistent with such an object. I find that the evidence adduced by PW1, 4, 6 and 8 has all corroborated that of the children PW2 and 3 to the effect that it was the accused who occasioned the injuries suffered by the deceased.

25. **As to the issue whether the failure by the prosecution to recover and adduce in evidence the murder weapon is fatal to their case.** It was the contention of the learned Defence Counsel Mr. Khayega that it was impossible for a "panga" to fit in a pocket as alleged by the prosecution witnesses. Counsel urged that to rely on the testimony of PW1, PW2 and PW3 that the accused had a panga in his pocket would be a travesty and would lead to an injustice being meted out against the accused. Counsel urged that the investigating officer never recovered a Panga which is the alleged murder weapon hence no forensic evidence was adduced to corroborate the testimonies of the eye witnesses.

26. Learned Prosecution Counsel Ms. Onunga urged that the eye witness account of events is the most reliable form of evidence. Counsel urged that PW1, 2 and 3 had corroborated each other that the accused attacked the deceased severally with a panga. Counsel urged that PW4's testimony also established that the accused was armed with a "Panga". Counsel urged that although the murder weapon was not recovered, it's patently clear that it was a "panga" as confirmed by the evidence of PW1, 2, 3, and 4 and corroborated by the evidence of PW6 that the probable weapon used was a "Panga" or an Axe. Counsel relied on the case of **Ekai v R (1981) KLR 569** to espouse the point that failure to produce the murder weapon in itself was not fatal to a conviction.

27. Our courts have dealt with this issue in the past. The Court of Appeal in **Karani v. Republic (2010) 1 KLR 73** stated that:

> **'The offence as charged could have been proved even if the dangerous weapon was not produced as exhibit as indeed happens in several cases where the weapon is not recovered. So long as the court believes, on evidence before it, that such a weapon existed at the time of the offence, the court may still enter and has been entering conviction without the weapon being produced as exhibit.'**

28. In **RAMADHAN KOMBE V REPUBLIC, Mombasa C.A. NO. 168 OF 2002** the Court of Appeal sitting in Mombasa took a similar approach where it held:

> **"In the matter before the trial court and before us, the cause of death of the deceased is patently obvious. The weapon used was a sword. There is no other version of how the deceased was killed nor by whom. Moreover, the record shows that the doctor who prepared the post mortem report was cross-examined. The failure by the prosecution witness to produce the murder weapon was not fatal to the case of the prosecution nor did it prejudice the appellant's defence. We have no hesitation in rejecting this submission"**

29. I have already found that the prosecution has proved that the deceased was attacked using a panga, and that it is the accused who attacked her. There are four eye witnesses who saw the accused carrying a panga soon after the attack. The pathologist opined that the injuries on the deceased were inflicted by a flat/sharp object like a panga.

30. I find that even if the dangerous weapon was not produced as exhibit in this case, having not been recovered, I am convinced from the evidence before this court that such a weapon existed at the time of the offence. The fact that the murder weapon was never recovered can be explained by the evidence of PW4. She saw the accused leave the deceased house armed with a panga. It is therefore upon the accused to explain the whereabouts of the panga having fled the scene with the same. I find that failure by the prosecution to produce the murder weapon is not fatal to the prosecution case.

31. **On issue whether the prosecution has established that at the time of the incident the accused actions were actuated by malice aforethought.** Counsel for the accused urged that in the absence of the murder weapon, the prosecution witnesses' testimonies that they saw the accused armed with a panga on the material night was not possible. Counsel urged that consequently a finding that the accused acted out of malice cannot be arrived at. Counsel urged that the evidence was to the effect that the accused and deceased used to fight often and hence the injuries on the deceased were inflicted during a fight. Counsel urged that indeed the accused had injuries as indicated in P.Exh.2, the P3 form in respect of the accused.

32. Ms. Onunga for the prosecution urged that the injuries occasioned on the deceased were fatal grievous harm clearly falling within **Section 206(b)** of the **Criminal Procedure Code**. Counsel urged that intention to cause death had been established in the manner in which the murder was executed. Counsel urged that the accused had issued threats to the deceased which threats he made real. Counsel further urged that the seriousness of the injuries inflicted depicted the deep-seated hatred that the accused had on the deceased, a fact which can only be described as gross malice of the highest degree. Counsel finally urged that the conduct of the accused before and after the commission of the offence pointed to his guilt. Counsel urged that the fact that the accused came to his house armed with a Panga and the fact that he was hiding it is evidence that he had prepared to commit the crime which he did.

33. Malice aforethought is provided for under **Section 206** of the **Penal Code**. It may be established by way of evidence when any of the following circumstances exist:

> ***"(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 death or grievous harm to some person, whether that person is the person killed or not, accompanied by indifference whether death or grievous injury occurs or not or by a wish that it may not be caused.***
>
> ***(c) An intention to commit a felony; and***
>
> ***(d) An intention to facilitate the escape from custody of or the flight of any person who has committed a felony or attempted it."***

34. In the case of **Nzuki V Rep 1993 KLR 171** the learned Judges of Appeal set out the principles of determining whether intention to commit murder is proved as follows:

> **" 1. Malice aforethought is a term of art and is either an express intention to kill or implied where by a voluntary act by a person intending to cause grievous bodily harm to his victim and the victim died as the result.**
>
> **2. Before an act can be murder, it must be aimed at someone and must be an act committed with one of the following intentions**
>
> **(a) To cause death;**
>
> **(b) Cause grievous bodily harm; and**

(c) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensure from his acts, and commits these acts deliberately.

3. 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.

4. …

5. …

35. In the cited case of **Nzuki,** supra, the Court of Appeal held that even though the appellant's conduct was done with the knowledge that the action is likely or highly likely to cause death or grievous harm, that in itself is not enough if there is no evidence to establish that the accused had formed an intention to cause death or to cause grievous harm, or knew his conduct may cause serious harm or death but committed the act deliberately any way.

36. PW1, 2 and 3 testified that the accused removed a panga from his clothing's and set upon the deceased cutting her severally. From the evidence of PW1, 2 and 3, it is clear that the accused and deceased did not have any physical confrontation prior to the accused actions. The accused set upon the deceased after she refused to accompany him to sleep. PW1, 2 and 3 all testified to the fact that the accused cut the deceased on the head and mouth before cutting her right knee.

37. The nature of the injuries the accused inflicted on the deceased was well defined by the pathologist, PW6. PW6 said that she noted nine (9) multiple cut wounds. She stated that one was on the left side of the head above the ear, one on the left side of the back of the head, one on the left front part of the head, one on the upper lip, one on the left forearm, one on the back of the left hand, one on the right forearm near the wrist on the back almost severing the wrist at the joint, and one on the right knee.

38. PW6 testified that internally there was a left parietal bone fracture linear extending to the mid line, there was a laceration on the left upper lobe near the ear and that there was slight bleeding over the left back side of the brain above the brain matter. PW6 formed the opinion that the cause of death was exsanguination due to sharp force trauma multiple to the head and upper limbs.

39. The injuries inflicted on the deceased were very severe. Nine severe cuts in all, four on the head and across the mouth, four on the hands and one on the knee. The pictures of the deceased taken by PW8 at the scene give testimony of the severity of the attack and the injuries she suffered. PW8 documented the scene of crime. He testified that the deceased body had two (2) deep cuts on the forehead, one cutting the upper lip, two (2) deep cuts on the forearm, a deep cut at the wrist area of the right hand and a deep cut on the knee. PW8 did not turn the body of the deceased and only spoke of the injuries he could see on the deceased as she leaned on her back. The injuries are akin to hacking or chopping of the deceased body, on the head and hands. The acts of hacking repeatedly at the deceased is evidence of malice. It is clear the intention the accused had in this attack was to cause the deceased death.

40. PW7 who examined the deceased to ascertain his mental status testified that the accused was in good general physical condition. PW7 testified that the accused had a tissue injury on the left elbow which was 14 days. He described the injury as being consistent with a blunt trauma and that the accused had not received any treatment.

41. The accused had an injury, tissue injury, meaning a very minor injury. It was not a serious one. Despite being free for four days before his arrest, he had not sought treatment for it. The eye witnesses did not see the deceased fight back or push the accused as he alleged. The injury was superficial, it does not excuse the accused for the nature and extent of injury he inflicted on the deceased.

42. The accused denied cutting the deceased with a panga. He testified in defence that he only hit the deceased with a flat sheet of iron after the deceased had tripped on his leg as he tried to open the door so that he could run away from the deceased harassment. He further testified that he ran away from the scene out of fear of being lynched by the youth that had already gathered at the scene of crime.

43. Having considered the evidence by the prosecution and the defence, I find that from the post mortem report P. Exhibit 1, it is clear that the deceased suffered multiple cut wounds on the head and upper limbs. PW1, 2 and 3 witnessed the accused person inflict these injuries on the deceased as they screamed and sought for help.

44. The accused had armed himself with a weapon that was sharp and had a wide cutting edge prior to him cutting the deceased prior to the attack. He was seen pulling the panga from his person by PW1, 2 and 3. That is proof of pre-meditation. The weapon he chose is quite telling. The choice of where he aimed and severely injured the deceased are indicative of one bent on inflicting maximum harm or death on his victim.

45. It is trite law that anyone who uses such a lethal weapon and uses it to strike the head and hands several times as accused did, ought to know that the injuries inflicted are likely to cause the death of that person. The accused targeted the head, mouth and arms of the deceased, parts of the body that are very delicate and could easily lead to death, all establish that the accused had premeditated his actions.

46. The calmness with which he immediately fled the scene and went miles away to a totally different county from the scene portrays indifference. He offered no help to his victim. His actions were consistent with the conduct of someone who was running away, a sign of a person with a guilty mind. The upshot is that I find that malice aforethought under **Section 206 (b)** of the **Penal Code** was proved. I find that the accused conduct and the circumstances of this case taken together are consistent with a person whose actions were actuated by malice.

47. **The last issue for determination is whether self defence applies to this case.** It was the defence counsel's submission that from the

accused testimony, it was the accused evidence that his actions were a reaction to the deceased provocation when she assaulted him. Counsel urged that the P3 form adduced as evidence confirmed that the accused and deceased had an argument. That with the accused having been pinned down, he was only defending himself from the obese lady who had subdued him. Counsel urged that together with the fact that the deceased had at one time broken the accused arm, the accused was only defending himself.

48. Learned prosecution counsel urged that the accused in his unsworn statement had admitted that he attacked the deceased. Counsel urged that the eye witnesses' account of events formed a chain that the defence would not dislodge.

49. Under **section 17** of the **Penal Code**: It stipulates thus:

> **"Subject to any express provisions in this code or any other law in operation in Kenya, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English Common Law.**

50. Those principles have been clearly elucidated in the persuasive authorities in **Palmer v Republic [1971] AC 814 and in Republic v Mcinnes 55 Cr. Appeal 551** where the Privy Council and the Court of Appeal respectively stated as follows:

> **"It is both good law and good sense that a man who is attacked may defend himself. It is both good law and common sense that he may do, but only do, what is reasonably necessary. But everything will depend upon particular facts and circumstances. Some attacks may be serious and dangerous, others may not be. If then is some relatively minor attack, it would not be common sense to permit some act of retaliation which was wholly out of proportion to the necessities of the situation. If an attack is serious so that it puts someone in immediate peril, then in a mediate defensive action may be necessary. If the moment is out of crisis for someone in immediate danger, he may have to avert the danger by some instant reaction. If the attack is over and no sort of peril remains, then the employment of force may be way of revenge or punishment or by way of paying off an old score or may be pure aggression. That may be no longer any link with a necessity of disproved, in which case as a defence it is rejected. In a homicide case this circumstances may be such that it will become an issue as to whether there was provocation so that the verdict might be out of manslaughter. Any other possible issues will remain. If in any case the view is possible that the intent necessary to constitute the crime of murder was lacking then the matter would be left to the jury."**

51. In **Robert Kinuthia Mungai V Republic (1982-88) 1KAR 611 ,** the Court delivered itself as;

> **"…….we think in view of the earlier East African cases we have considered, and the more recent English decision in R v Shannon Crim. LR 438 1980, that, the interpretation of the judgment of the Privy Council in Palmer V Republic is that while there is no rule that excessive force in defence of the person will in all cases lead to a verdict of manslaughter, there are nevertheless instances where that result is a proper one in the circumstances and on the facts of the case being considered"**

> **"It is a doctrine recognized in East Africa that excessive use of force in the defence of the person or property, whether defence of the self-defence is upheld, a conviction or not there is an element of provocation present, may be sufficient for the Court to regard the offence not as murder but as manslaughter. ..."**

52. As I have discussed elsewhere in this judgment, the accused was armed with a sharp and wide edged object which he had hidden in his clothes before he attacked the deceased and cut her severally. The deceased was unarmed at the time of this incident. She suffered defensive injuries on the arms as she tried to block the offensive attack by the accused. None of the eye witnesses saw the deceased hit or attack or push or fight or confront the accused that night. They stated that it was the accused who attacked the deceased and inflicted the numerous cut wounds. The pathologist found several injuries including defence wounds on the deceased.

53. Granted the accused suffered a superficial injury, and as stated earlier, he did not see the need to be treated for it, proof it was not significant. I find that such an injury cannot be the reason for the attack given the fact, among other things, the accused had already armed himself before the attack. It can therefore not be said that the accused's life was in imminent danger at the time of this incident as to justify cutting the deceased the number of times that he did.

54. The accused stated that the deceased had previous to this incident broken his hand, a fact though not corroborated, PW4 admitted accused had a cast on his hand at one time. A past attack cannot justify a claim of self-defence. Self-defence does not apply retrospectively. The accused life must have been in imminent danger for the accused to use commensurate force to defend himself, at the time of attack. The historical attack or violence on the accused does not accord the accused the defence of self-defence.

55. Even if the accused life was in danger, which I find it was not, the force used by the accused far exceeds reasonable force, is not excusable and cannot lead to a substitution of the charge as suggested by the defence. I therefore find that under the circumstances of this case, the accused acts were actuated by malice and not by a desire to defend himself. Self-defence does not apply to this case.

56. Upon analysing and evaluating the entire evidence in this case, and upon considering the submissions of counsel and the law, I find that the prosecution has proved that the accused deliberately attacked the deceased and cut, in fact hacked her several times causing her multiple severe cut wounds on sensitive and vulnerable parts of the body. His actions were premeditated and were aimed at causing grievous harm or death to the accused. I find that the accused committed the offence of **murder** contrary to **Section 203** of the **Penal Code**.

57. Having come to the conclusions I have of this case. I find that the prosecution has proved the charge of **murder** contrary to **Section 203** of the **Penal Code** as against the accused person beyond any reasonable doubt. Consequently, I find the accused guilty of **murder** as charged and accordingly convict him under **section 322** of the **Criminal Procedure Code**

DATED AT NAIROBI THIS 7th DAY OF OCTOBER, 2019

LESIIT, J.

JUDGE