



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**CRIMINAL CASE NO. 18 OF 2013**

**REPUBLIC.....PROSECUTION**

**VS**

**KEVIN OMWANZA OUA ALIAS JUNIOR.....ACCUSED**

**JUDGMENT**

1. The accused, Kevin Omwanza Oua *alias* Junior, 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 on the 26<sup>th</sup> day of April 2013, at Standard Bar in Sondu Township in Kericho West District of Kericho County, jointly with others not before court, he murdered Edwin Kibet Cheruiyot.

2. The hearing of the case started before Ong’udi J who heard six of the 11 prosecution witnesses. Following the transfer of the learned Judge to Nairobi and my transfer to Kericho, I heard the remaining 5 witnesses, the accused having elected to have the matter proceed from where it had reached.

3. The first prosecution witness, PW1, was Jennifer Kwamboka Nyalibo, a resident of Sondu who was working at the counter of the Standard Bar in Sondu. On the 26<sup>th</sup> of April 2013, at 10.00 p.m., she was at the bar where customers were eating and drinking. The accused, Kevin Omwanza Oua and one Evans “Chonjo” were at the bar, at separate tables. The deceased, whom PW1 referred to as “Dr. Edwin” and Judy walked in to be served, and the deceased went to the sink near the counter to wash his hands.

4. As he did so, “Chonjo” walked up to him and started slapping him. The accused then stood up and said “*Does this person know who we are?*” “Chonjo” was then holding the deceased by the neck and pressing him against the sink. The accused hit the deceased with something like a fist and he fell down. PW1 checked on him and saw that his eyes were closed, and she went out to call the watchman but did not find him. She then called her employer.

5. By this time, people had gathered at the scene, and the accused and “Chonjo” had left. The deceased was bleeding from the throat, and when PW1’s employer, Agnes Njeri (PW3) came, they called the police. She was interviewed by the police and she gave the names of those whom she had seen at the scene, then they were taken to the police station. Her evidence was that she just saw the accused’s fist. She did not know what he held as she did not see it, and she just saw the accused hit the deceased on the neck (throat).

6. In cross-examination, PW1 stated that she had been working at the bar since 2012. She had worked there for about 9 months prior to the incident. She was at the back counter of the bar, which has two rooms and a kitchen, in which there was a restaurant. The sink was in a corner of the room.

7. Her evidence was that it was “Chonjo” who first beat the deceased. That he held the deceased and slapped him, and that he held him by the neck, pressing him. The accused hit the deceased on the neck/throat. She had been able to see what was happening as they used electricity in the bar.

8. Judith Chelangat (PW2), a business woman from Koiyat in Kiptere told the court that on 26<sup>th</sup> April 2013 at 6.30 p.m., she was at Sondu waiting for transport home when she met the deceased and he invited her for a drink. They went to Standard Bar, sat at a table and ordered drinks. The deceased then said that he wanted to have a meal and she gave some fish which she had bought to someone at the bar kitchen to prepare for them. They then left for another bar, “Usiogope Sambaza Bar” at Sondu for drinks as they waited for their meal. They returned to the Standard Bar restaurant at 8.30 p.m.

9. The deceased then went to wash his hands at the sink, which was near the door of the kitchen. PW2 was standing behind him. She testified that she suddenly saw the accused and another person next to the deceased. The accused was holding the deceased’s neck while the other person held his stomach. She then saw the deceased on the floor, bleeding, while the accused and his friend ran through the kitchen door. She held the deceased, who was bleeding from the neck, and screamed. People came and said that he had died. Her evidence was that it was the accused who was holding the deceased’s neck. She did not know whether they had quarreled before, and she did not know the accused prior to the incident.

10. In cross-examination, her testimony was that the deceased had gone ahead of her to wash his hands. She was waiting for him to wash when she saw him fall. She could not tell whether the deceased and the accused had argued before. She had just seen them hold him, and then he fell. She had then left and gone home as the deceased had died. She had recorded her statement the following day. Those who had attacked the deceased were not there when she recorded her statement. In response to a question from the court, she stated that she had been able to see the persons at the bar as there was electricity light in the bar, and that it was on.
11. PW3 was Agnes Njeri, the owner of Standard Bar, where she runs a bar and butchery. On 26<sup>th</sup> April 2013 at 8.45 p.m. she had gone to the butchery to collect money. While at the counter, she saw the deceased pass with another woman. He invited her for supper, which was being prepared at the kitchen. She told him she did not eat fish, which he was having prepared at the kitchen, so he promised to buy her a soda when he was through. The deceased and the woman then went to the restaurant.
12. Soon thereafter, PW3 saw her worker (PW1) walking out with her hands on her head. As she was talking to a customer, people came from the bar and asked her whether she knew that people were killing each other at the back. She closed the butchery and went to the hotel where she met another of her workers, one George, who informed her that "Junior" and another had killed a person. She went to the restaurant and found the deceased lying on the ground. She lifted him up and saw a flow of blood, and she started screaming. She then called the police. PW1 was questioned and she mentioned Junior, who is the accused, and "Chonjo", both of whom PW3 knew.
13. PW3 confirmed that they use electricity light at the bar, and that the light was on that night. She later heard on 28<sup>th</sup> April 2013 that some thieves had been arrested at Chabera. On going to check at Chabera Police Station which is where those arrested were, she found that the accused was one of them.
14. In cross-examination, PW3 stated that she had not witnessed the incident, which had occurred at the restaurant. She had seen blood oozing from the deceased after she lifted him up. She did not see the accused and "Chonjo" when she entered the bar. She knew the accused prior to the incident as he used to go to the bar for drinks. She also knew "Chonjo" who was from Sondu. On the day of the incident, she had seen the accused and "Chonjo" at her bar, eating, and had even talked to them.
15. The fourth prosecution witness was the father of the deceased, one Samuel Cheruiyot arap Sang, a farmer from Lelagoi. He had been at home at about 9.00 p.m. on 26<sup>th</sup> April 2013 when he was called by a Samuel Kitur, his son's employer, and informed that his son had been injured and he should go to Sondu immediately. He found his son's body at a hotel in Sondu. He witnessed the post mortem the following day and identified the body to the doctor who conducted the post mortem.
16. PW5, George Morara Kibore, was working at the Standard Bar, where he used to cook, on the material day. He was on duty on the 26<sup>th</sup> of April 2013 at 8.00 p.m. The deceased, who was their customer, brought him fish to prepare for him, and said that he would be back later. He returned after 30 minutes and PW5 told him to go and wash his hands as he served the food. PW5 testified that as he served the food, he heard shouts of "leave, leave." He ran from the kitchen and found the deceased on the floor near the kitchen, lying on his back with blood oozing from his throat. They tried to assist him but realised that he had died. PW5 later came to learn that the deceased had been stabbed by someone. He confirmed in cross-examination that he had not witnessed the incident, and did not know who had killed his customer.
17. PW6 was Charles Jumba Okello who lived and worked in Chabera at the booking office of Nyamira Express. On 29<sup>th</sup> April 2013 at 6.30 a.m., he arrived at the booking office. They had been experiencing a lot of chicken thefts lately, and so when, while at the office, they saw a man with a basket who had gone round twice, he and his colleagues, four in number, decided to follow him. They found him seated, holding a hen. They interrogated him and he did not say anything, and so they took him to the Chabera Administration Police Camp. When the Administration Police searched him, a knife dropped from his trousers. He was taken to Sondu Police Station. PW6 was later asked to go to Sondu Police Station to record a statement. He identified the accused as the person they had arrested in Chabera and taken to the AP camp.
18. On 12<sup>th</sup> April 2016, following the transfer of Ong'udi J from the station, the accused elected to have the matter proceed from where it had reached in accordance with section 200 of the Criminal Procedure Code. The matter then came up before me on 27<sup>th</sup> July 2016 when the Counsel for the accused was not available. The matter ultimately proceeded before me on 17<sup>th</sup> August 2016, when the accused confirmed that he wished to have the matter proceed from where it had reached.
19. PW7, Kipkemoi Cheruiyot, was a brother of the deceased. He was called on 30<sup>th</sup> April 2013 and told to go and see his brother who had been killed on 26<sup>th</sup> April 2013. He attended the post mortem conducted on the deceased. He testified that the deceased had been stabbed on the left side of the neck and also on the lower stomach on the right. The doctor who conducted the post mortem, Dr. Soi, informed them that the deceased had been stabbed with a knife and that he died as a result of the stab injuries to the neck.
20. PW8 was No. 68932 PC Julius Kirwa who was then stationed at Nzoia Police Station in Bungoma County. At the time of the incident, he was stationed at Sondu Police Station, Kericho County. On 26<sup>th</sup> April 2013, at around 7.30 p.m., he was on duty as crimes standby personnel. He received a call at around 9.15 p.m. from the Officer in Charge, Crime, in Sondu, one Thomas Parkola, requesting him to meet him at Sondu Town where an incident had occurred. They went to Sondu and found a crowd outside Standard Bar and Restaurant where the incident had occurred. They were informed that someone had been killed inside the bar. They requested for the bar, which had been closed, to be opened, and they went inside the kitchen of the bar. They found the body, identified as that of the deceased, Edwin Kibet Cheruiyot, lying inside in a pool of blood.
21. Upon inquiry from the counter attendant and the cook, they were informed that the deceased had come in earlier accompanied by a female friend with three pieces of fish which he had requested to be cooked for him. He had proceeded to another bar. When the deceased came back he had gone to the kitchen to ask if his fish had been cooked. He was followed from behind by two customers who were seated at one of the rooms at the bar, drinking beer. They had confronted him and one of them stabbed the deceased on the neck and on the left of the abdomen, and then they had left the deceased as he fell and ran out into the darkness.

22. The deceased had a fresh wound on the left side of the neck which was still bleeding. The wound in the lower abdomen was also bleeding. PW8 stated that they tried to pursue the suspects but were not successful. They informed the scenes of crime personnel who came and photographed the body, then they moved it to the Kericho District Hospital Mortuary awaiting post mortem. They had recorded statements from witnesses the following morning.
23. In the morning of 28<sup>th</sup> April 2013, they received information from Chabera Administration Police Camp that they had arrested two suspects who had stolen some goods from Nyamira. One suspect had been identified as one who had killed the deceased within the jurisdiction of Sondu Police Station within Rift Valley Province. PW8 testified that they had then gone to Chabera where the suspect had been arrested and had re-arrested him and taken him to Sondu Police Station where he was charged with the offence before this court.
24. According to PW8, the accused was famously known by his nick name "Junior". He was also a common figure in Sondu and a regular at the bar in Sondu, and was known by almost all members of the public. PW8 stated that they suspected that a sharp object had been used to cause the injuries on the deceased, but they had not recovered anything at the scene.
25. In cross-examination, PW8 testified that there were other witnesses who had ran out of the bar. The deceased had been accompanied by a girlfriend (Judith Chelangat, PW2), whom they had interviewed. Judging from the blood on the floor, the deceased was already dead when they arrived. There were two suspects, both of whom were known, one of whom was still at large. They had not conducted an identification parade as there was no need to since the eye witnesses were able to say who had done what. He and two of his colleagues had gone to Chabera and brought two suspects back. The suspects had been arrested for theft of chicken. They had later sent one suspect back to Chabera and remained with the accused who was suspected of having committed murder. They had recovered a weapon from the suspect in Chabera.
26. The 9<sup>th</sup> prosecution witness was No. 234371 Inspector Thomas Parkola, attached to Kandara Police Station, Muranga County, as the Deputy OCS. He was previously attached to Sondu Police Station as the officer in charge, crime.
27. On 26<sup>th</sup> April 2013, at around 9.15 p.m., he had received a call from an unknown person that someone had been killed at Standard Bar within Sondu Township. He had gone to the scene with PC Julius Kirwa (PW8). On entering one of the rooms in the bar, he found the body of a young man in a pool of blood. The young man was later identified as Edwin Kibet Cheruiyot, aged 33 years. The body had two deep cuts, one on the left side of the neck and the other on the lower abdomen. He had cordoned off the scene and called the scene of crime officers to the scene. The body had later been moved to Kericho Sub-County Hospital for a post mortem.
28. Later, the accused was arrested on 28<sup>th</sup> April 2013 at Chabera. From statements recorded with various witnesses, the accused had been mentioned as Kevin Omwanza Oua alias "Junior". Another suspect, not before court, had been named as Evans alias "Chonjo".
29. PW9 further testified that they had recovered a knife from the accused. The knife, which had blood stains, was taken to the Government Chemist together with blood samples from the deceased for comparison. They had received a report from the Government Chemist. The knife had been recovered by Corporal Ezekiel Kibet of Chabera AP Camp who had handed it over to PW9 as he was the investigating officer. PW9 produced the knife, a retractable knife with blood stains on it, as exhibit 1. He also produced a sketch map of the scene where the body was found as exhibit 2.
30. In cross-examination, PW9 stated that the knife was recovered by Mr. Ezekiel Kibet. PW9 had gone to Chabera to collect the accused, and had also collected the knife at the Chabera AP Camp. He had taken the knife to the Government Chemist, though he did not have a letter forwarding the knife to the Government Chemist.
31. PW10 was Justus Burudi, a Commissioner of Police currently attached to Kisii County. At the material time, he was working at the Kericho County as the District Criminal Investigations Officer between 2010 to June 2013. The accused had been brought from Sondu by the investigating officer and PW10, then a superintendent of police, was requested to record his statement, which he did on 29<sup>th</sup> April 2013. He had recorded the accused's statement, a typed copy of which was produced in evidence as exhibit 3.
32. PW10 identified the accused as the person from whom he had recorded the statement under inquiry. He had cautioned the accused that anything he said could be used in evidence against him. There was no objection to the production of the statement by the defence. The handwritten statement of the accused, which he had signed by writing his full name, had also been produced in evidence as exhibit 4.
33. In the statement which was recorded in Kiswahili which the accused said he understood, the accused stated that on 26<sup>th</sup> April 2013 at about 8.00 p.m., he was at the Standard Bar with his friend called Evans alias "Chonjo". They were drinking. He narrated how he and the said "Chonjo" had had an altercation with the deceased over a woman. That the deceased had come from the front door-way and slapped Evans and asked him what he was doing with the woman. The accused had tried to inquire from him what he was doing and the deceased had slapped him on the face. The accused had stood up and they had held one another with the deceased. That the accused had tried to free himself, but as they were drunk, he had removed his pocket knife from his pocket and requested the deceased to leave him.
34. The accused stated that he was using the small knife as a fist without the deceased noticing, and he hit the deceased with it on the right side of the neck and later on the stomach area once, and the deceased released him. The accused's friend, Evans, had held the deceased and when he released him, the deceased fell to the ground. The accused and his friend had then fled as many people had come to the scene.
35. The final witness for the prosecution, PW11, was Dr. Kosgey Fibian from Kericho District Hospital. He produced the post mortem report on the deceased which had been prepared by Dr. Ken Soi, who had left government employment and was working for a non-governmental organization in Sierra Leone. Dr. Kosgey had worked with Dr. Soy at the Kericho District Hospital and was familiar with his handwriting.
36. The post mortem report was dated 30<sup>th</sup> April 2013. It was performed on the body of the deceased, Edwin Cheruiyot Kibet, at the

Kericho District Hospital Mortuary at 11.20 a.m. The report indicated that the deceased had, inter alia, a wound on the left supra clavicle region measuring 4 inches deep, 3 inches wide and with smooth edges. The body also had a wound on the left side of the abdomen 2 cm above the anterior superior iliac spine measuring 4.5 inches deep and two inches wide. The body also had collapse of the left lung with bleeding of the lung tissue, with approximately 500 milliliters of blood. He had minimal blood in the body tissues, and there was laceration of the major neck vessels, the jugular vein and the carotid artery, on the left side. The cause of death, according to the post mortem report, was due to cardio-pulmonary arrest resulting from massive haemorrhage caused by a penetrating injury to the neck consistent with a stab wound. The post mortem report was produced as exhibit 5.

37. Following the close of the prosecution case, the court found that the prosecution had established a prima facie case against the accused to warrant placing him on his defence.

38. The accused elected to give an unsworn statement in his defence and not to call any witnesses. He stated that he was a resident of Jabera (Chabera) in Nyamira County where he sells chicken to earn a living.

39. With respect to the charges facing him, he stated that on the 26<sup>th</sup> of April 2013, he was in Jabera carrying on his business of buying chicken to take to market as usual. While he was there, in the morning, he met a man known as Patrick carrying his chicken on the way to the market. As the accused was walking and talking to the said Patrick, a man known as Charles Chumba (PW6) a member of the Nyumba Kumi in Jabera, emerged and told the accused that the chicken he had bought were not properly obtained. As they spoke, a large crowd emerged and said that they should go to the police station.

40. They went to the police station and he asked for a cash bail. That as he waited for the cash bail, he was told that he would be taken to court on 29<sup>th</sup> April 2013. He was also told that he was being looked for. He was then removed from Jabera Police Station and taken to Sondu Police Post and later to Kericho Police Station. He stayed there until 30<sup>th</sup> April 2013 when he was taken to court and charged with the murder of Edwin Cheruiyot Kibet. He stated that he did not commit the murder, and did not know the deceased.

41. In his submissions on behalf of the accused, Learned Counsel, Mr. Kosgey stated that the prosecution has failed to prove its case against the accused to the required standard- beyond reasonable doubt. It was his submission that the prosecution witnesses gave contradictory and inconsistent evidence. He noted that while PW1's testimony was that the offence occurred on 26<sup>th</sup> April 2013 at 10.00 p.m., while the evidence of PW2 and PW3 was that the offence occurred at 8.30 p.m.

42. Further, that it is not clear whether PW1 saw the accused and his accomplice known as Evans "Chonjo" and that she never saw the implement used by the accused to attack the deceased. She only saw a fist of the accused and could not see what the accused was holding even though they were close. It was also his submission that in cross-examination, PW1 had stated that she had seen "Chonjo" beating the deceased person; that he had held him by the neck as he slapped him. That she had further stated that there was electricity in the bar, and this is how she had seen Evans "Chonjo" attack the deceased. His submission was that this was clear evidence that the accused did not attack the deceased.

43. It was his submission further that the other prosecution witnesses, PW3, the owner of the Standard bar where the offence occurred, and PW6, a cook at the Standard Bar did not witness the incident.

44. Mr. Koske also submitted that no proper investigation was done by the investigating officer, PW8. Though there was a knife recovered from the accused person which was taken to the government analyst, no evidence was presented in court to link the accused with the offence. Though PW9 was insisting in his evidence that the knife was taken to the Government Chemist no report was brought to court.

45. It was also the defence submission that the police had failed to arrest the accused's accomplice; that PW10, who recorded the statement of the accused, only produced the cautionary statement but did not adduce any evidence with regard to the cautionary statement; that the said statement is not signed by the accused, is not dated and is therefore not admissible in evidence.

46. The submission of the accused was that the prosecution had not established malice aforethought as required under section 204 of the Penal Code; that the evidence does not show the intention of the accused to kill the deceased; that the witnesses did not say that there was a quarrel or a fight between the deceased and the accused. It was Mr. Koske's submission therefore that a case of murder had not been made out against the accused.

47. I have considered the prosecution evidence and the unsworn statement of the accused, as well as the submissions of his Counsel. The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. Section 203 provides that **"Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.**

48. Section 206 provides 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;***

***(c) an intent to commit a felony;***

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

49. There is something peculiarly pointless and senseless about the death of the deceased in this case. This was a young man, 33 years of age. He goes to a bar with a friend, and leaves a few fish to be cooked for their supper. He comes back for his supper, and goes to the sink in the restaurant to wash his hands. In a few minutes, he is attacked by two people, and in probably a matter of minutes, he is dead from a stab wound to the jugular vein and the carotid artery, and a stab wound to the stomach.

50. Other than the inquiry statement of the accused, there is little before the court to explain the motive for this attack. From the said statement, the attack was motivated by an altercation between the deceased and the accused and his friend over a woman. However, there was no one else who testified to having witnessed such altercation. This is perhaps why Mr. Koske submitted that the prosecution had not established that the accused had malice aforethought in causing the death of the deceased.

51. The prosecution, however, has produced evidence that places the accused at the Standard Bar at the time of the attack on the deceased. The evidence indicates that the accused was a regular at the bar, and was known to members of the public there. He was known to PW1, who saw him and one "Chonjo" attack the deceased. She had seen the said "Chonjo" walk up to the deceased and start slapping him. The accused had then stood up and said "*Does this person know who we are?*" and had hit the deceased, who was being held by "Chonjo" by the neck and pressed against the sink, in the neck with what PW1 thought was his fist, and the deceased had fallen down.

52. PW2 had also seen the accused and the said "Chonjo" attack the deceased. She had been standing behind the deceased at the sink, waiting to wash her hands so that she and the deceased could share the fish that they had left cooking in the kitchen of the Standard Bar. Her evidence was that she suddenly saw the accused and another person next to the deceased, the accused holding the deceased's neck while the other person held his stomach. She had seen the deceased on the floor, bleeding. The accused and his friend had then ran through the kitchen door and left the bar.

53. PW3, the owner of the bar, had also seen the accused and "Chonjo" at the bar. They had been eating at the bar. She had not, however, seen the attack on the deceased, and only learnt about it after it happened and her worker, PW1, had informed her that the accused and "Chonjo" had attacked the deceased.

54. I note that the incident in which the deceased was attacked occurred in a bar which was lit by electricity. There was therefore no problem of visibility of the events that took place, and therefore no doubt about who had attacked the deceased. The accused and his accomplice were well known in the bar, where they were regulars, and they were seen by people who knew them. PW1 and PW2 had seen the attack on the deceased, though they were not able to tell what the accused and his accomplice had attacked the deceased with.

55. It is not possible to tell whether the weapon used was the knife that was later recovered from the accused after his arrest in Chabera, and which was produced in court. There was no analysis report to indicate whether the blood on the knife was that of the deceased. It is also not possible to tell what motivated the attack. However, from the evidence of PW1, 2 and 3, I am satisfied that it was the accused, together with his accomplice not before court, who attacked and stabbed the deceased in the throat and stomach, leading to his death.

56. I note the submissions of Counsel for the defence with respect to the inconsistencies on the time when the events took place. However, I am not satisfied that the inconsistencies in terms of time, whether 9.45 p.m. or 10.00 p.m., are material inconsistencies that can weaken the prosecution case. Further, the fact that the evidence was not clear on the murder weapon does not, in my view, weaken the prosecution case. As was held in **Criminal Appeal No. 75 of 2014 Kazungu Katana Ngoa vs Republic**, the absence of a murder weapon was not fatal to a conviction. In that case, the Court of Appeal sitting in Malindi stated as follows:

***"This Court has in the past had occasion to deal with the question and in Ekai vs Republic (1981) KLR 569; held that failure to produce the murder weapon of itself was not fatal to a conviction and that as long as the post mortem report had established beyond reasonable doubt the injury from which the deceased died, a conviction could still stand. Similarly, in Karani v. Republic (2010) 1 KLR 73; the court 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.'***

57. In this case, the accused had been seen to 'hit' the deceased, as the witness, PW1 thought, on the throat with his 'fist'. He and his colleague had been seen attacking the deceased, one 'holding' him around the stomach. The post mortem report indicated that the deceased had a wound on the left supra clavicle region measuring 4 inches deep and 3 inches wide; he had a wound on the left side of the abdomen 2 cm above the anterior superior iliac spine measuring 4.5 inches deep and two inches wide. He had laceration of the major neck vessels, the jugular vein and the carotid artery, on the left side. The report concluded that the cause of death was cardio-pulmonary arrest resulting from massive haemorrhage caused by a penetrating injury to the neck consistent with a stab wound.

58. In this case, a retractable knife had been recovered from the accused following his arrest in Chabera about two days after the incident. It was produced in court, though there was no evidence that it was the one that had caused the fatal injuries to the deceased. However, even without the murder weapon, there is sufficient evidence to show that the deceased died from stab wounds inflicted on his neck and stomach. The stab wounds to the neck, where PW1 had seen the accused 'hit' the deceased with his 'fist,' caused laceration of the major blood vessels of the neck. In my view, the prosecution has proved its case against the accused to the required standard.

59. In reaching this conclusion, I have borne in mind the unsworn statement of the accused in his defence, in which he narrated events of days after the offence with which he is charged. I have also noted the statements of the accused in his inquiry statement made to PW10. I am

satisfied that the prosecution has proved its case against the accused beyond reasonable doubt. I accordingly convict him of the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

**Dated Delivered and Signed at Kericho this 16<sup>th</sup> day of May 2018.**

**MUMBI NGUGI**

**JUDGE**