

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAJIADO**  
**CRIMINAL CASE NO. 5 OF 2018**

**REPUBLIC.....**

**.....PROSECUTOR**

**VERSUS**

**ALICE WAMBUI THAIRU.....1<sup>ST</sup>**  
**ACCUSED**

**PETER MWAURA NJERU.....2<sup>ND</sup>**  
**ACCUSED**

**MARTIN CHEGE MWAURA.....3<sup>RD</sup>**  
**ACCUSED**

**DENNIS KIHARA MWAURA.....4<sup>TH</sup>**  
**ACCUSED**

**JUDGMENT**

1. **Alice Wambui Thairu, Peter Mwaura Njeru, Martin Chege Mwaura and Dennis Kihara Mwaura** (hereafter the 1<sup>st</sup> to 4<sup>th</sup> Accused respectively/the Accused), are jointly charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars state that on 11<sup>th</sup> February 2018 at **Nkoroi area** of **Ongata Rongai** within Kajiado County, with others not before the court, they jointly murdered **Priscilla Wangeci Wanjiku** (hereafter the deceased).

2. The Accused denied the charge and the case proceeded to full hearing with sixteen (16) witnesses testifying for the prosecution before my predecessor **Mutuku J**, who subsequently ruled that a prima facie case had been established against all the Accused persons .

### **Prosecution Case**

3. The scenes of crime officer, **Sgt. George Odhiambo**, attached to DCI Ongata Rongai testified as **PW1**. To the effect that on 11.2.2018 at 7:00p.m he received a call from **PC Karanja** informing him of a case of suicide at Nkoroi along Kanisani Road. He accompanied him, **IP Muli** who was the duty officer, and the person who had made the report, to the scene.

4. The scene of the incident was a house within a homestead. In the main bedroom was the body of the deceased. It was on a *lesso* in a kneeling position, facing the wall, next to a steel bed with a rope or cable tied to the neck and affixed to the bed. He took several photos at the scene as follows:

1. Jerusalem Close leading to the home.

2. Close-up view of the road sign on Jerusalem close.
3. General view of the homestead.
4. Bedroom of house where the body was found
5. Rear view of the said house.
6. Immediate house to the scene.
8. Corridor to the bedroom
9. Photo No. 8, 9, 10, 11, 12 - various positions of the body while tied, before it was untied.
10. Photo No. 13 - whole body picture as it was.
11. Photo No. 14 - Chest and face of body on being untied.
12. Photo No. 15 - P.C Chege pointing at the location of the body.
13. Photo No. 16 - Keys to the main door found next to the body on the mattress, phone, tape measure.
14. Photo No. 17 - Whole body.
15. Photo No. 18 - Whole body on removal and shoe prints on the lower limbs.
16. Photo No. 19 - P.C. Chege pointing at a mattress with shoe prints.

17. Photo No. 21 –Broken wooden rafter in the ceiling of the room.

18. Photo No. 22 – Closer -up view of the rafter and also photos 23 and 24 showing the bed.

19. Photo No. 25 – Keys to the house of the deceased.

20. Photo No. 26 and 27 - P.C Franklin recovering the duplicate keys from the father-in-law (2<sup>nd</sup> Accused).

5. **PW1** added that on 23.12. 2018 the DCIO **Cecilia Mugambi** instructed him to revisit the scene due to reported interference therewith, and in the Company of **P.C. Chege** proceeded to the scene where they the rear door of the house was in the process of being welded. He took photographs of **P.C. Chege** pointing at the welded key hole of the door; close-up view of the welding; and of both sides of the house. These photographs and certificate were produced as **P.Exh. 3A** and the certificate as **P.Exh. 3B**.

6. He highlighted some observations he made at the scene, including, that it appeared that someone had stepped on the deceased's thighs, leaving a shoe print that was similar to the shoe print he also noted on the wall of the room; and that

the mobile phone, keys, masking tape and a pinkish rope were beside the bed . Finally, he stated that spare keys for the deceased's house were recovered in the main house in the homestead, and that the police team cut off the rope from the deceased's neck.

7. **Veronica Wanjiku**, testifying as **PW3** identified herself as the mother of the deceased, and asserted that the deceased was married to one **Maurice Mbugua**, a son to the 1<sup>st</sup> and 2<sup>nd</sup> Accused. She stated that the deceased had started living with the husband in August 2017. On 10.02.2018 the deceased informed her that she was intending to go to the home of the 1<sup>st</sup> Accused who had invited her to attend a church fellowship at her home. However, when the deceased did not return on 11.02.2018 as expected, she made many futile attempts to reach her on phone until a cousin and teacher colleague of the deceased, one **Mary (PW11)**, called to inform her that she had received a message from 1<sup>st</sup> Accused concerning the deceased.

8. Accompanied by **Jennifer Wangoi, PW11, Julius Kimani (PW6), James Kariuki, Bernard Wamai, PW3** then

proceeded to Ongata Rongai, to the home of the 1<sup>st</sup> and 2<sup>nd</sup> Accused, who informed them that the deceased had committed suicide. The 4<sup>th</sup> Accused showing them the location where the incident had happened, and blurry photos on his phone, of the recovered body. On 15.2.2018 she witnessed the postmortem conducted on the deceased at the City Mortuary.

9. Under cross-examination, she stated that the deceased had not disclosed to her that she had conceived, and admitted that she did not know much about her marriage as the deceased confided more in her aunt (**PW5**). She stated that she when she was shown the alleged suicide note left by the deceased, she disputed that it was written by the deceased as her handwriting was small. She stated that the Accused persons did not participate in the funeral arrangements for the deceased.

10. **Cyrus Njoroge Kinyanjui** testifying as **PW4** stated that he is a resident of Nkoroi in Ongata Rongai; that he and the Accused persons fellowshipped together at Nkoroi parish; and that on 11.2. 2018 he attended a Jumia fellowship at the

Accused's home, which started at 2pm and ended at 4pm. He stated that he learned about the incident at the Accused's home on the evening news on 12.2.2018 and that he did not know the deceased. He confirmed during cross-examination that he was aware of a robbery incident that had previously occurred at the Accused's home.

11. **Lydia Wanjiru Maina (PW5)**, a maternal aunt to the deceased testified that she had a close relationship with the deceased and on 10.02.2018, the deceased had called her and expressed concerns regarding her marital relationship with **Maurice Mbugua**, a son of the 1<sup>st</sup> and 2<sup>nd</sup> Accused, and that the said husband had threatened her, demanding that she leaves the matrimonial home. And upon learning on 12.02.2018 that the deceased had committed suicide, she accompanied the mother of the deceased to the Accused's home where they were briefed by the family.

12. **PW6**, a maternal uncle to the deceased also testified that he too accompanied **PW3** to the home of the Accused, where the 4<sup>th</sup> Accused showed them the scene of the alleged suicide incident, and photos showing the deceased's body in a

kneeling position next to the bed, with a rope around her neck and tape covering her mouth. He also identified the body on 15.2.2018 during the postmortem examination when DNA samples were taken. He said that a second postmortem by a different pathologist doctor revealed that the deceased was not only strangled, but pressure was applied to the chest, and was pregnant with twins. Eventually the body was released to the family for burial.

13. **Nelly Kemuma Ongera (PW7)** is wife to the 4<sup>th</sup> Accused and in the material period resided at the family homestead at Nkoroi and knew the deceased as the wife to Maurice Mbugua, a brother to her husband. She said she last saw the deceased at the family homestead on 10.2. 2018 at 7:30pm. On the following day she woke up at 6.00am and with her daughter proceeded to the 1<sup>st</sup> Accused's house where with other women in the family, **Anne Wangari, Anne Wangui,** and **Njeri** they made preparations for guests of the 1<sup>st</sup> and 2<sup>nd</sup> Accused, who arrived at 2.00pm.

14. Until then, the deceased had not joined them, and at 4:00pm, after consultations with other family members, she

used the spare keys which were ordinarily kept at the 1<sup>st</sup> and 2<sup>nd</sup> Accused's house to access the deceased's house through the kitchen door. Finding no one in the kitchen, she proceeded to the bedroom where she was confronted by the deceased's body in a kneeling position next to the window. She ran outside screaming and met the 3<sup>rd</sup> Accused, and together they proceeded to the 1<sup>st</sup> Accused's house and narrated what she had witnessed. The 1<sup>st</sup> Accused having thereafter proceeded to the house of the deceased came back and stated that the deceased had committed suicide. Thereafter a report was made to Ongata Rongai Police Station.

15. **PW 7** further testified that on 20.4.2018 while at home her niece **Alice Wambui Githieya (PW10)** showed her and other family members a piece of paper (the suicide note- **P.Exh. 12**) which allegedly bore the deceased's signature, but whose contents she did not understand. And that the lawyer advised them to hand it over to the police. In cross-examination she stated that Accused 1, 2 and 3 were within the homestead compound in their houses on the material dates.

16. **Pauline Njeri Nderitu**, wife of the 1<sup>st</sup> and 2<sup>nd</sup> Accused's son, **Arthur Thairu** testified as **PW8**. The gist of her evidence was that in the material period, she lived at the family homestead at Nkoroi and that on 10.2.2018 at about 9:00pm the deceased dropped by her house on her way to her own house and that she persuaded the deceased to spend the night in her house because burglars had broken into deceased's house on 27.1.2018. That after turning off the lights in her house, the deceased returned a few minutes later and they retired to bed, and that at 6:00am on the next day, the deceased went back to her house.

17. The witness herself woke up at 8:30am and after breakfast proceeded to assist in preparations for guests expected at the home of the 1<sup>st</sup> Accused. There, she found other women in the family including the 1<sup>st</sup> Accused, one **Nelly** and **Wangui**, but the deceased was absent both in the 1<sup>st</sup> Accused's and in her house. Nobody seemed to know where she was and up to 4:00pm when the visitors started leaving, she had not appeared. Presently, **PW8** heard **PW7's** screams coming from the direction of deceased's house and eventually learned

from the 1<sup>st</sup> Accused that the deceased had committed suicide. She stated that she did not go to the deceased's house to see the body.

18. The wife to the 4<sup>th</sup> Accused, **Hannah Wangui Mburu** testified as **PW9**. She too resided with her husband in the family homestead at Nkoroi. She testified that she saw the deceased enter her house via the back door was on 10.2.2018 and greeted her. She participated in the preparations at the house of the 1<sup>st</sup> and 2<sup>nd</sup> Accused on the next day, but did not see the deceased, and that until 4:00pm, efforts to reach her were futile.

19. She too described how a spare key was used by **PW7** to enter the deceased's house, only to come out screaming, following which the 1<sup>st</sup> Accused entered the same house and reported that the deceased had committed suicide. The matter was reported to police who later recorded her statement on 19.2.2018 following which she was arrested together with seven other members of the family; and that she spent 10 days in custody but was later released. She said that on 28.4.2018 **PW10** handed her a letter (**P.Exh. 12**)

which appeared to be addressing the death of the deceased and on calling the lawyer, he advised the family to hand it over to the police which they did on 30.2.2018.

20. On her part, **PW10** identified herself as a grandchild of the 1<sup>st</sup> Accused and a High School student in 2018, before narrating how on 28.4.2018 while cleaning the 1<sup>st</sup> Accused's house, she saw a folded piece of paper (**P.Exh. 12**) with writings fall from inside a pillow she moved from a seat. Upon reading read it she noted the name Priscilla (the deceased), and therefore took it to her aunt, one **Njoki** and later her other aunts. Eventually, on the lawyer's advice the note (**P.Exh. 12**) was on 30/4/2018 handed over to the DCIO Rongai. She stated that she did not understand the contents of the letter, but it conveyed a message about the deceased's death.

21. **PW11** was **Mary Wanjiku Macharia**, a cousin to the deceased and head teacher at Victorious Junior Centre Primary School. Her evidence was that the deceased was employed at the school in 2012; that because on 12.2.2018 the deceased did not report to work, she tried to reach her on

phone but the call did not go through; that upon telephoning **PW3** she learned that the deceased had gone to Ongata Rongai; that she later received a call from the 1<sup>st</sup> Accused who introduced herself as the mother to Maurice Mbugua and requested that the witness should go to the 1<sup>st</sup> Accused's home in the company of a relative; and that she joined **PW3** and others to do as requested, and on arrival, the party was informed that the deceased had committed suicide, and shown some photographs.

22. She further testified that a police officer from Ongata Rongai called to request her to submit documents containing the deceased's handwriting. She submitted an application letter and a CV of the deceased both, which were handwritten and dated 12.1.2018. She also supplied an application letter dated June 2010 and a signed document dated 5.6.2018, all which she produced as **P. Exh.13(A-F)**.

23. **PW12** was **CPL Joseph Karanja** of DCIO Ongata Rongai. He was on duty on 11.2.2018 with **PC Mutonya** when he was notified of a report made by the 2<sup>nd</sup> Accused, who was accompanied by his two sons, regarding **Priscilla Wangechi**

wife to one of the sons who had reportedly committed suicide in her house. The witness proceeded in the company of **Sgt. George Odhiambo (PW1)** the scenes of crime officer to the scene, where they found other officers led by **IP Muli**. The house in question was locked from outside, allegedly by the 2<sup>nd</sup> Accused who opened to enable the officers enter through the rear entrance.

24. They saw the body of the deceased in a kneeling position on a bedsheet, while facing the wall and tied by the neck tightly by a rope with several knots, against the bedpost. The mouth had been covered with a white masking tape. On the bed were a phone, keys and a roll of masking tape. The deceased wore a red skirt, black jacket and a blue pair of slippers; her hands appeared in defence position as if trying to untie herself. He asserted that there were footprint marks on the body and on the wall, while the bedsheet/lesso appeared to have been placed at the body after the incident. After the scene was documented by **PW1**, the body was removed to the City Mortuary.

25. The witness further testified that he revisited the scene the following day and noted that the shoe print on the wall was similar to a print from a Safari boot sole. He stated that the presence of the shoe marks suggested presence of another person. Asserting that the room was not disturbed; that there was no evidence of forcible entry; and that the bed was well-made, he also identified and produced the blue slippers (**P.Exh. 6.**); tape recovered at the scene (**P.Exh. exhibit 7C**); bed sheet (**P.Exh. 5**); and two pieces of rope (**P.Exh. 8**). The witness stated that he attended the postmortem examination on 15.2.2018 during which the body was identified to the pathologist by the deceased's relatives, and that the deceased was found to be pregnant with twins, a boy and girl. On 20.2.2018 he collected DNA samples taken from the bodies before handing over investigations to **P.C. Mutonya**.

26. He confirmed during cross-examination that he was the initial investigating officer and the police removed the rope tying the deceased and he is the person who cut the rope. He stated that no shoe (safari boot) was recovered in the house and no search was conducted. But reiterated that one of the

deceased's hand held onto the rope and there was no evidence of a commotion at the scene and that police did not lift any finger prints from the scene.

27. **CPL Martin Butali (PW13)**, a document examiner of 7 years' experience testified that on 4.5.2018, he received documents for examination, including the alleged suicide note marked **A1 (P. Exh.12)** being the questioned document, **B1 - B4** comprising the known handwriting specimens, and known signatures in **C1-2 (P. Exh 13 )** containing known signatures. His task was to investigate whether the handwriting in **A1** compared with writings in **B1 - B4**, whether by same hand. He stated that the handwritings were made by the same hand while the signature in **A1** and the ones in **C1-2** were generated by the same hand. However, he noted inconsistencies in the writings in the questioned document on the arrangements of paragraphs and certain characters such as (Y, G) the design of the characters and the mixing of upper and lower cases in the characters. Implying, that the maker was mentally unstable, someone under threats or an acute disease like diabetes. He produced his report as **P.Exh. 15**.

28. On behalf of **Dr. Ndegwa, Dr. Njau Mungai (PW14)**, also a pathologist, produced the postmortem report in respect of the post mortem the former conducted on the deceased at the City Mortuary on 14.2.2018 at the request of Ongata Rongai Police Station. The observations on the body were that the mouth of the deceased was mask-taped; there were blood stains in the nostrils and the eyes were swollen; that the face was congested; there was an electrical cable measuring 150cm around the neck and there were ligature impressions on the neck; as well as chest compression. The deceased was found to be pregnant with two foetuses, male and female, of 6 months gestation. The pathologist's conclusion was that the deceased died of ligature strangulation and chest compression. According to the pathologist, the chest compression could not be self-inflicting. The post mortem report was marked as **P.Exh. 16**.

29. The testimony of **Sgt. Henry Kathurima Mwongo (PW15)** was as follows. He worked at DCI Headquarters but was attached to Safaricom Security Department and Technical Division, and that on 21.2.2018 he received a request from

the DCIO Ongata Rongai seeking from Safaricom, calls data records in respect of telephone numbers **0720911026** and **0701656094** among others which were not relevant, for the period between 8.2.2018 and 21.2.2018. He stated that number **0720911026** belonged to the deceased herein, of identity No. 24657931. He outlined the transcribers movements from Dandora to Nkoroi on 10.2. 2018 and produced the data as **P.Exh. 17**, and call data in respect of number **0710656094** registered in the name of **Dennis Kihara Mwarua** (4<sup>th</sup> accused) of Id No: 29843535 IMEI No: 865266036087910 related to 26.2.2018 (**P. Exh.18**). During cross- examination he stated that he did not retrieve any text messages from the handsets in which the lines were used.

30. The final witness was the investigating officer, **PC Joseph Mutonya Jonathan (PW16)**. He recalled that while on duty on 11/2/2018 he received information concerning a suicide report made by the 2<sup>nd</sup> Accused. To the effect that his daughter-in-law had committed suicide in her house, as recorded vide OB No 84/11/2/2018 (**P. Exh 21**). He also learned from **Cpl. Karanja** that he had found deceased's

body in a bedroom inside her house, her neck tied with an electric iron cable, and the mouth sealed with masking tape. Further that there was no evidence of house breaking.

31. Accompanied by **Cpl. Kenjo** and others on 13/2/2018, the witness visited the scene and observed a broken ceiling timber rafter in the house in question, a shoe print mark resembling safari boot sole print on the wall, while the bed appeared undisturbed. He formed the impression that the broken ceiling timber rafter was the point where the rope around the deceased's neck may have been tied, but broke due to her weight. He together with colleagues attended the postmortem on the deceased conducted at City Mortuary by **Dr. Ndegwa** on 15.2.2018 after identification by family members. The cause of death was stated to be due to ligature strangulation with chest compression, the pathologist ruling out suicide. Two dead fetuses of a boy and girl were removed.

32. **PW16** produced articles handed to him by **PW12**, being a key and padlock as **(P.Ex 7 (b))** and **9 (b))**, and pointed to photographs processed by **Sgt Odhiambo (PW1)** showing

the shoe print mark on the thigh of the deceased that appeared similar to shoe print mark on the wall of the house where the body was found. He highlighted evidence that the deceased had confided in one of her relatives (**PW5**) that her relationship with the deceased was strained at the material time and the call data obtained from Safaricom (**P.Exh. 17**). The witness also produced the digital forensic examination report dated 20/9/2018 and prepared by **IP Bernard Gitonga Njeru** in respect of the 4<sup>th</sup> Accused's Oppo Phone and line no. 0701656094 (**P.Exh. 23**).

33. **PW16** explained that upon the arrest of the Accused persons on 25.2.2018, their mobile phones including the 4<sup>th</sup> Accused's Oppo phone were confiscated and forwarded via an exhibit memo (**P.Exh. 24**) to the Cyber-crime and Anti-terror personnel who prepared the report (**P. Exh.23**). Which contained communication data between the 4<sup>th</sup> Accused and his brother, **Maurice Mbugua**, the deceased's husband then residing in Dubai.

34. During the arrest spare keys for the deceased's house were recovered from the 1<sup>st</sup> and 2<sup>nd</sup> Accused ( **P.Exh. 9 (a)**). All

which he recorded in the inventory marked **P.Exh. 25**, and further produced the deceased's alleged suicide note as **P.Exh. 12**. His enquiries with Safaricom regarding line no. 072841682 confirmed the subscriber to be the 4<sup>th</sup> Accused of ID No. 29843535 as confirmed by the report from the National Registration Bureau (P.Exh. 28). Finally, the witness stated that he thought the 4<sup>th</sup> Accused was culpable for the death of deceased.

35. During cross-examination regarding the WhatsApp messages in **P.Exh. 23, PW16** admitted that the words "kill ", "murder" or "tupa mwili" were not in the communication. And stated that he charged the 1<sup>st</sup> and 2<sup>nd</sup> Accused because they lured the deceased to their house to attend a church service in their home where the deceased had a house. Admitting that the evidence against the 3<sup>rd</sup> and 4<sup>th</sup> Accused was circumstantial, he stated that he did not know the role each played in the killing of the deceased. But reiterating evidence of the broken ceiling rafter, stated that each accused took part in strangling the deceased.

### **Defence case**

36. When the defence case opened before me, the 1st Accused opted to remain silent and did not call witnesses while the 2<sup>nd</sup> to 4th Accused elected to give sworn testimony but did not call witnesses.

37. The 2<sup>nd</sup> Accused testified that he resides at Nkoroi, Ongata Rongai. That the 1<sup>st</sup> Accused is his wife, the 3<sup>rd</sup> Accused is his eldest son while the 4<sup>th</sup> Accused is his fourth born son. He stated that the deceased was the wife to his son Maurice (Mbugua). He stated that he resides in the same compound as his sons who have their own separate houses. Stating that he had met the deceased earlier when his son introduced her as his wife, he said that whenever the deceased visited, she stayed in the house of Maurice; that on 10.2.2018 he was at his home and that the deceased had spent the night at her husband's house; that on the next day, he was informed at 4pm that her body was found in the said house by the 4<sup>th</sup> Accused's wife.

38. Thereafter, without first viewing the body, he immediately left with his sons to report police who accompanied them to his home. In the bedroom of the house of the son, he saw the body of the deceased which had a cable around her neck which was tied on the bed. He said that he did not have any differences with the deceased.

39. Under cross-examination he stated that the 1<sup>st</sup> Accused was the one who had invited the deceased to the home on 10.2.2018 to help prepare for some expected guests. And that he learned that she had slept at the house of **PW8** after supper at his house. He stated that whenever the deceased visited, she would attend the local church on Sunday and asserted that the deceased had committed suicide while stating that the deceased's body was not suspended from a high place. He also stated that her hands were on the neck. He confirmed that there were two sets of keys to the house where the deceased was and that one set was kept in his house. He said he did not know why the deceased continued to live in Dandora yet she had a home at the son's house at Nkoroi, or his son's views on the arrangement .

40. On his part the 3<sup>rd</sup> Accused stated that he resides at Nkoroi in the same homestead as his father and mother (1<sup>st</sup> and 2<sup>nd</sup> Accused) and other brothers, including, the 4<sup>th</sup> Accused and the deceased's husband Maurice also charged with Murder in **Criminal Case 6 of 2019**. He stated that he was married to **PW9**, and on 11.2.2018, a Sunday, he was at home; that he was aware of a planned church meeting at his parents' house which his wife attended while he remained at his house and did not attend the function. He was drawn from his house by the screaming of **PW7** who stated that the deceased appeared dead. **Jane Wambui** his niece was also present, and together with the 2<sup>nd</sup> Accused he reported the matter to police. He stated that he did not enter the house where the body was, but the 1<sup>st</sup> Accused did.

41. He saw the body when police accompanied them back to the scene. He described its position as slanted and hanging from the neck beside the bed on a cable tied to the metal frame bed post; it had no injuries but was dressed though without shoes, and with the mouth sealed with tape. He said that prior to this he had seen the deceased 3 times in a period of 3

months and was aware she worked as a teacher in Dandora, and had no issues with her.

42. The 4<sup>th</sup> Accused identified his co-accused are his parents and brother, respectively and **PW7** as his wife. His testimony was that on 11.2.2018 he went to work and later got a call from his wife informing him that the deceased who had been introduced to them by his brother Maurice as a wife was missing. Later on learning that the deceased's body had been found in the house of his brother Maurice (her husband), he accompanied his co-accused to report to police. He said the body which was fully dressed had a cable on the neck which was secured on the bed headrest; that the body was facing the wall with an upturned face, the mouth sealed with white masking tape but the bed was not disturbed. He said he did not see any injury on the body or blood on the clothes. He cut the cable on instructions of the police and the body fell off, as photographs were taken before the body was removed . He stated that he did not know that the deceased was expectant and that he had no differences with her.

43. During cross-examination, he stated that he occasionally spoke to his brother Maurice on phone but had never discussed the deceased and that when he introduced her to the family, they accepted her. He confirmed that Maurice had instructed him to remove the deceased's belongings from his home a week after the death, and he inquired whether they should dispose of the belongings by burning them.
44. No submissions were filed by the defence or prosecution at the close of the defence case.

### **Analysis and Determination**

45. The court has reviewed the entire evidence on record. The question falling for determination at this stage is whether the prosecution has proved the charges against the Accused beyond reasonable doubt. Some basic facts are not in dispute. The 1<sup>st</sup> and 2<sup>nd</sup> Accused are the parents of the 3<sup>rd</sup> and 4<sup>th</sup> Accused, and one **Arthur Thairu**, husband of **PW8**. Another brother, Maurice Mbugua (hereafter Maurice) who is separately charged in connection with the death of the deceased is also a son to the 1<sup>st</sup> and 2<sup>nd</sup> Accused, but was at

the material time residing in Dubai, while the Accused persons with their respective spouses lived at the family homestead at Nkoroi , each occupying their own separate houses. Maurice too had his own house in that compound. Some months prior to the material date, the deceased, a teacher working and ordinarily residing at Dandora with her mother **PW3** was introduced by Maurice to this family as a wife or girlfriend.

46. Although it appears that no formal ceremony was held between the family of the deceased and Maurice who at the material time was away in Dubai, after the introduction to Maurice's family, the deceased ordinarily resided at Dandora, but occasionally visited the Nkoroi family home during which visits she would stay in the house of Maurice. On the specific weekend of her death, the deceased who was six months pregnant with twins, had been invited over by the 1<sup>st</sup> Accused to assist in preparations for her guests expected on 11.02.2018. She arrived on the previous day and having spent time with other women in the family in the house of the 1<sup>st</sup> and 2<sup>nd</sup> Accused, eventually retired for the night in the house of the **Arthur Thairu** at the invitation of his wife, **PW8**.

47. According to **PW8**, the deceased left the house at 6:30am on the next day, but did not join the other women at the house of the 1<sup>st</sup> Accused, and eventually at about 4:00pm, **PW7** using spare keys accessed the house of Maurice only to find her dead body in tied by a cable to the neck which was fastened to the headrest of the bed by several knots. Police were notified and visited the scene which was documented before the body was removed, and a postmortem conducted a few days later. The pathologist determined the cause of death to be ligature strangulation with chest compression.

48. The Accused were subsequently arrested, and about two months later while investigations were ongoing, the Accused's family presented police with a handwritten suicide note, purportedly authored by the deceased which had allegedly been found by **PW10** in the house of the 1<sup>st</sup> and 2<sup>nd</sup> Accused.

49. The charge facing the Accused persons is created by Section 203 of the Penal Code which states:

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

50. The burden here lay with the prosecution to prove the above ingredients of the offence, namely, the *fact* and *cause* of the death of the deceased person, and that it is the accused persons whose *actions* or *omissions* led to the deceased's death, and, that the accused persons had *malice aforethought*, as held in **Roba Galma Wario vs. Republic [2015] eKLR.**

51. The prosecution case rests on circumstantial evidence; none of the witnesses testified to have been witnesses to the murder of the deceased, or gave any kind of direct evidence to that effect. The threshold for convicting an accused person on circumstantial evidence was spelt out by the Court of Appeal in **Abanga alias Onyango vs. Republic (CR. App. No. 32 of 1990) LLR No. 3975** as follows:

**“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests:**

- i. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;**

- ii. **Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;**
- iii. **The circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”**

52. Similarly, the same Court reiterated the applicable principles in **Joan Chebichii Sawe vs. Republic [2003] eKLR** as follows:

**“As we have already pointed out, the evidence in this case was entirely circumstantial. In order to justify, on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. There must be no other co-existing circumstances weakening the chain of circumstances relied on. The burden of proving facts that justify the drawing of this inference**

**from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden, which never shifts to the party accused.”**

53. The fact of the deceased’s death by strangulation is not disputed, but regarding the cause, the question arising from the evidence at hand is whether she died of suicide or was strangled. Indeed, the initial reports made by Maurice’s family to police was that the deceased had committed suicide.

54. Looking at the evidence, there are several strands that negate the suicide theory. First, the appearance of the scene as described by several eyewitnesses and photographs taken by police while documenting the scene. The court having keenly studied these photographs and the oral evidence is of the view that it is a practical impossibility that the deceased while in a kneeling position hang herself from a rope tied to the bed headrest about a foot above her head. To do so, she would have had to first tie one end of the rope on the bed head rest and the other on her neck, and then pull her body

away so hard that the rope and noose were tight enough to strangle her. That appears an impossible feat for a woman who was six months pregnant. Her body was not found hanging from any significant height, she was literally tethered on a cable like an animal to the headrest of the bed with several knots, while on her knees.

55. The bed itself and room appeared undisturbed, according to the witnesses. In fact, the deceased was kneeling on a neatly arranged *lesso* with her keys and phone near her. If indeed the deceased took her own life, why would she have taken the trouble of sealing her own mouth with masking tape, having left an undated suicide note (**P.Exh. 12**) hidden in a different house? The location of the note allegedly found tucked in a seat cushion two months later by **PW10** in the house of the 1<sup>st</sup> Accused raises questions as to what opportunity the deceased had to put it there on the 10<sup>th</sup> February 2018.

56. From the evidence of the family members who spent time with her on that date, there were several family members present at the 1<sup>st</sup> Accused's house, and it appears unlikely that the deceased had the opportunity not only to write but to

tuck the suicide note in a sofa cushion on the evening of 10.02.2018.

57. Besides, one would have expected the deceased if she indeed committed suicide to leave the note on or near her body or in her house where it could easily be found. And although the document examiner (**PW13**) confirmed the handwriting thereon to resemble the deceased's, he also highlighted discrepancies in the arrangements of paragraphs, formation of certain characters such as (Y, G), the design of the characters and the mixing of upper and lower cases in the characters. Implying, that the maker was mentally unstable, someone under threats or an acute disease like diabetes.

58. There was evidence by **PW8** and others that there had been a burglary at the deceased's house a few weeks before the material date, the very reason why **PW8** dissuaded the deceased from spending the night there alone, but instead to stay in the witness's house that night. The deceased was not keen because having slept on a bed in that house previously, she thought it was uncomfortable, but the witness's offer of a different bed apparently convinced the deceased who agreed,

briefly went to switch off lights and returned. She left early on the next morning.

59. **PW8** was not the only witness who engaged with the deceased on the night of 10.2.2018. According to **PW9**, at about 7.00pm on the night of 10.2.2018, the deceased had passed near her house and sprang a prank on her and the 4<sup>th</sup> Accused by speaking to them in a contorted voice, which resulted in laughter and light banter between the deceased and **PW9**, when the witness turned on the security lights recognized the deceased. Thereafter, the deceased proceeded to her house, before returning to spend the night at **PW7's** house. **PW7** did not indicate that the deceased was distraught or in any way disturbed during their lengthy interaction, and indeed all the women in the family expected her to help in preparations at their mother-in-law's house on 11.2.2018, and until the day wore on, did not appear too concerned about her absence.

60. Earlier, the deceased had left her mother's home at Dandora having reported that she was headed to Nkoroi on the invitation of the 1<sup>st</sup> Accused. The two spoke twice on the

phone on 10.2.2018 concerning mundane matters concerning the deceased's shampoo. Is it plausible that the deceased had determined to commit suicide as she travelled to Nkoroi? The court doubts that the profile emerging from the foregoing evidence is of a woman contemplating suicide.

61. This evidence and the presence of a shoe print on the deceased's thigh and house wall, (per **PW16**), and manner in which she was tethered to the bedpost appears to point to the involvement of a third person or persons, who possibly also planted the note in the house of the 1<sup>st</sup> Accused. Certainly, someone in Maurice's family who had access to the house and privy to the killing of the deceased. The foregoing strongly points to the possibility that the deceased was strangled by a third party or parties who made it appear to be suicide.

62. There was no evidence of forcible entry into the house where the deceased was found after **PW7** used spare keys ordinarily kept in the house of the 1<sup>st</sup> and 2<sup>nd</sup> Accused to gain access. Suggesting that the third party or parties may have accessed the house in the same way and locked it after killing the deceased, and in turn, the involvement of at least one or

several members of Maurice's family who had access to the house spare keys. It is therefore probable that her killers were lurking inside her house when she returned there on the morning of 11.2.2018 and thereafter made good their escape, having locked the door.

63. The above conclusions are strongly supported by medical evidence tendered by **PW14** being the post mortem report (**P.Exh. 16**) containing the following findings:

- a.** that the mouth of the deceased was mask-taped;
- b.** there were blood stains in the nostrils and the eyes were swollen;
- c.** that the face was congested;
- d.** there was an electrical cable measuring 150cm around the neck and there were ligature impressions on the neck.
- e.** the deceased was found to be pregnant with two foetuses.
- f.** the pathologist's conclusion was that the deceased died of ligature strangulation and *chest compression*.
- g.** the *chest compression* could not be self-inflicting.

64. The above evidence was not seriously challenged at the trial and suggests that the chest compression was an externally

inflicted injury. Upon its own evaluation of all the relevant evidence, the court finds no reasonable basis for the suicide theory. On the contrary, there are adequate and credible pieces of evidence in support of the conclusion that the death of the deceased was due to the unlawful acts or omissions of some person or persons, and judging from the circumstances here, the said persons acted with malice aforethought as defined in Section 206 (a) and (b) of the Penal Code.

65. Having settled the above questions, the next pertinent question is whether the Accused persons herein committed the acts or omissions leading to the death of the deceased.

66. On this score, there was hardly any dispute that the 1<sup>st</sup> Accused invited the deceased, in her capacity as the wife of her son Maurice, to her home on the fateful weekend to assist in preparations for guests expected there on 11.2.2018. Indeed, there was evidence by several witnesses including **PW4** that the said guests were at the home for a church fellowship or meeting between 2.00pm. and 4.00pm. The 1<sup>st</sup> Accused, **PW7** and **PW8** were among the family women who

had noted the absence of the deceased on the morning of 11.2.2018 and tried her door and phone, without success.

67. Other than extending an invitation to the deceased, her presence on 10.2.2018 at her house where the deceased took supper, (per **PW8**) and confirming her death on the next day, no evidence was adduced to link the 1<sup>st</sup> Accused with any unlawful action by herself or in conjunction with others that caused the death of the deceased. Specifically, the allegation by **PW16** that she and the 2<sup>nd</sup> Accused lured the deceased to her death appears unsupported and based on mere speculation or suspicion. No inference of guilt could possibly be drawn from circumstantial evidence of such a weak nature.

68. Similarly, as against the 2<sup>nd</sup> Accused there is no dispute as to his presence at his home on the 10<sup>th</sup> and 11<sup>th</sup> February 2018. Both he and his wife, the 1<sup>st</sup> Accused had custody of the spare keys to Maurice's house, which keys, from the evidence of witnesses such as **PW7** and **PW8** who were the members of the household, could be accessed by the sons of the 1<sup>st</sup> and 2<sup>nd</sup> Accused and their spouses. There is no direct evidence that the parent couple gave the keys to any person, on the

night of 10.2.2018 or early on the next day, until 4:00pm on the latter date when, **PW7**, the wife of the 4<sup>th</sup> Accused obtained the said keys and accessed the house of the deceased to discover her dead body.

69. The 2<sup>nd</sup> Accused was among the persons who upon the discovery of the body made a report to police to the effect that the deceased had committed suicide. No other evidence tendered implicated him either directly or indirectly in the death of the deceased. There can be no inference of guilt based on such bare circumstantial evidence which in the court's view fails to demonstrate the unlawful acts or omissions by the 2<sup>nd</sup> accused alone or jointly with others leading to the death of the deceased.

70. As regards the 3<sup>rd</sup> Accused, the husband of **PW9**, and living at the family homestead at the material time, there was no evidence adduced by the prosecution to link him with the death of the deceased. It was not disputed that he was at the family home on the material weekend and was among those attracted by **PW7's** screams upon the discovery of the deceased's body and accompanied other family members to

file a report with police. There was no evidence that he was in his parent's house on the night of 10.2.2025 when the deceased other family members were there.

71. However, **PW9** stated that on the night of 10.2.2018, the 4<sup>th</sup> Accused went to her house and collected keys to the 3<sup>rd</sup> Accused's vehicle which he said wanted to use. The witness did not indicate whether her husband was present at the time but stated that while she and the said Accused conversed, the deceased appeared and spoke to them from a short distance while headed to her house. The 3<sup>rd</sup> Accused's defence statement was confined to the events of 11.2.2018. Reviewing the circumstantial evidence, the court is of the view that it is weak and insufficient to support an inference of guilt against the 3<sup>rd</sup> Accused.

72. As against the 4<sup>th</sup> Accused the chief plank of circumstantial evidence is firstly, his presence at the homestead on the material weekend and the undisputed WhatsApp conversation and call log data for the period between 11.2.2018 at 15.33hrs and 23.2.2018 at 22.17hrs (**P.Exh. 23**), retrieved from the 4<sup>th</sup>

Accused's phone. The conversation was between him and his brother Maurice.

73. Although cryptic, the messages exchanged obviously refer to events surrounding the deceased's death, and it appears that the 4<sup>th</sup> Accused played the role of keeping Maurice informed, having obviously sent him a photograph of the body of the deceased while cautioning him severally not to share it. At some point the 4<sup>th</sup> Accused was alerting Maurice that the police were asking after him and also warned him to be careful what he said if the police contacted him. However, his standard refrain when Maurice appeared agitated by the investigations was what seemed a loaded caution to the effect that police *wanfanya kazi yao* - were doing their work- while Maurice reiterated that the deceased was alone in the house when she died. It is evident from this evidence that the 4<sup>th</sup> Accused was Maurice's point man in this period and the exchange of cryptic messages appear to leave a lot unsaid.

74. In their messages exchanged about a week since the death, and while investigations were ongoing, the brothers were discussing how to dispose of the personal effects of the

deceased, with Maurice giving repeated instructions on what should be done. By this time, per **PW1** and **PW16**, they had arranged to have the door to the house of Maurice welded, apparently more concerned with securing the house, than allowing the completion of the investigations. The welding of the door and in particular, the discussion about disposal of the deceased's effects happening so soon after the death is certainly surprising, suspicious, and almost sounded callous. Indeed, the family of Maurice did not participate in the funeral of the deceased whom they claimed to have accepted as Maurice's wife.

75. The animus and hostility against the deceased exhibited in this conduct and the messages between the 4<sup>th</sup> Accused and Maurice goes to confirm evidence by **PW5** that the deceased had confided in her concerning her troubled relationship with Maurice, who had at the material time warned her not to go to his house and threatened her with eviction if she did. Evidence by **PW9** was that on the night of 10.02.2018 the 4<sup>th</sup> Accused borrowed his brother's vehicle to go somewhere. The defence statement offered by the 4<sup>th</sup> Accused was confined to

the common events of 11.2.2018 and did not address this incident.

76. Looking at the entire evidence on record, and more so the conduct and posture of the 4<sup>th</sup> Accused as disclosed in the WhatsApp conversation with Maurice, it appears likely that some members of Maurice's family, especially the 4<sup>th</sup> Accused, knew more about the circumstances of the deceased's death than they cared to admit to the police and before the court. The evidence casts serious suspicion against the 4<sup>th</sup> Accused, but suspicion alone, however strong, cannot be the basis for an inference that he participated in the unlawful act or omission that caused the deceased's death. Dead men, or women for that matter, tell no tales, and the true circumstances of the deceased's death and consequently her two unborn children, will probably forever remain a mystery to her family. Be that as it may, a court of law can only pronounce itself on the basis of the facts before it and the law.

77. In conclusion, the court finds that the prosecution has failed to prove beyond reasonable doubt, that the four Accused persons jointly carried out the unlawful act or omission leading

to the death of the deceased, and ultimately, the charge preferred against them. Accordingly, the Court must acquit the four Accused of the charge of Murder contrary to Section 203 as read with Section 204 of the Penal Code. It is so ordered.

**DELIVERED AND SIGNED AT KAJIADO ON THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**



**C.MEOLI**  
**JUDGE**

**In the presence of:**

**For the State: Mr. Kilunda**

**For the Accused: Mr. Onserio**

**Accused:1,2,3 & 4: All present**

**C/ A: Lepatei**