



**Republic v Ngunyi & 4 others (Criminal Case 7 of 2018)
[2025] KEHC 14053 (KLR) (8 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14053 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL CASE 7 OF 2018
AK NDUNG’U, J
OCTOBER 8, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

MARGARET WAKINI NGUNYI 1ST ACCUSED

PAUL NDAMBURI NGUNYI 2ND ACCUSED

DAVID KIRIMI DANIEL 3RD ACCUSED

DAVID KARAYA MWANIKI 4TH ACCUSED

BONIFACE GATHU GITHUI 5TH ACCUSED

JUDGMENT

1. The Accused herein, Margaret Wakini Ngunyi, Paul Ndamburi Ngunyi, David Kirimi Daniel, David Karaya Mwaniki And Boniface Gathu Githui were charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. It was alleged in the information dated 17/08/2017 that on 09/03/2018 at Likii village in Laikipia east sub county within Laikipia County jointly with others not before court murdered Dennis Wambugu.
2. The Accused persons pleaded not guilty to the charge and after trial where 8 prosecution witnesses testified, each of them was placed on their defence. They all gave sworn statements in their defence.

Prosecution’s case

3. PW1, Anne Nyarwai, the deceased’s mother testified that the deceased was working with Laikipia County Government in the cleaning department. The deceased visited her on 09/03/2018 in the morning and he left for work. On 10th, she did not communicate with the deceased and at 5:30pm, she was contacted by her elder son who asked her whether she had spoken to the deceased that day.



He informed her that the deceased had been attacked and could not be found. She proceeded to the deceased's house but it was locked. With her elder son, they proceeded to Nanyuki District hospital and they were informed by the security guard that a young man with injuries had been admitted the previous night. They checked in the wards and a nurse informed them that a young man who had been brought the previous night with injuries had died in the morning. She went home and accompanied by neighbours, they went back to hospital and they were taken to the mortuary. The neighbours entered the mortuary and identified the deceased's body. The following day they reported the matter at police station.

4. On cross examination by 1st and 2nd accused's counsel, she testified that she visited the scene where it was said the deceased was attacked and she did not talk to anyone there.
5. PW2 Caroline Muthoni testified that she lives in Likii village and owns a kiosk. She first saw the deceased on the date of the incident. She knew the 1st accused as she was living in the plot neighbouring their plot. She knew her as Mama Kabura or Mama Paul and she knew her children. She had known her for about 2 years. The 2nd accused, was 1st accused son. She knew the 3rd accused as Baba Mark and he was staying in the same plot as the 1st accused. She had known him for about 5 months. She also knew the 4th accused as baba Jimi and was living in the same plot as the 1st accused. She had known him for about 3 months. She did not know the 5th accused's name but she knew that he was working at a motor garage nearby and he was her customer at the kiosk. She had known him for about 2 years. That on 09/03/2018 at about 8:00pm, she was closing her kiosk. There were many people passing by. There was no street light but there was moonlight and she could see clearly a distance of like 165 steps. She heard screams from the 1st accused's house with shouts of 'thief thief' in Kikuyu and she was calling for help in Kikuyu. She stepped out of her gate and she saw the 1st accused standing outside her gate screaming in company of the 2nd accused and one Jimi. The deceased was also there. There were other people who were passing by. The deceased appeared very drunk and he was in company of three other people who were ahead of him.
6. The 2nd accused and Jimi chased the deceased while shouting 'thief thief' and the deceased was felled about 30 meters from where she was. The 1st and 2nd accused and Jimi then removed timber from the fence and started beating the deceased with the same. The 3rd and the 4th accused then joined. The 4th accused was Jimi's father. The 5th accused appeared from town side and demanded kerosene to be brought to burn the deceased. All accused kept hitting the deceased with the pieces of wood from the fence but as they would break, 3rd accused said he will get a piece of metal. He went into his house and came out with a piece of metal which was about 3 feet long and thickness was like her arm, about 2 ½ inches. The 3rd accused hit the deceased with the said metal once on the head and he fell quiet. That while he was being beaten, he was pleading that he was from Likii and produced his ID. He was pleading that he was not a thief, that he had been to his mother's place at Likii and should be taken there. That she ran away after the deceased was hit with the metal rod but she did not go far. The 5th accused demanded that she sell paraffin to him but she was not selling paraffin at her kiosk.
7. The 2nd accused and another person not before court brought a mkokoteni tyre and gave it to the 5th accused and they tried to light up the tyre but it did not burn. They gave up and left the deceased there. She then went to her home and she cooked and slept. The following morning, she went outside and saw many vehicles and there were people at the scene. She approached and saw blood and grass that showed signs of struggle. She did not see the pieces of wood or the metal bar that had been used to assault the deceased. The accused persons would also go and look. There was a woman in great distress who she learnt was the deceased mother and she narrated to her what she had seen the previous night. She secretly told her the persons who had assaulted the deceased and where they lived. She accompanied



- them to Nanyuki police station. She later on recorded her statement. She testified that nothing had been stolen from the 1st accused's plot. That she had not quarrelled with the accused persons. That the deceased was only attacked by the 5 accused persons and Jimi, 4th accused's son.
8. On cross examination by counsel for the 1st and 2nd accused, she testified that she had no business with the 1st accused but there was a time she was living in her plot about 2 years ago. That she left since there was no water and electricity and the room was small. She did not go with her rent and she never demanded rent from her. That there was no acrimony between them and she denied that she left due to rent arrears of 4 months. She did not know her real name but she knew the names of her children and her husband's name. That when she first heard the screams, she was outside her gate at her kiosk. That in her statement to the police, she said that she walked out of her house. When she went out, she saw the 1st accused, 2nd accused and Jimi. The 3rd and 4th accused then came out of their houses. The deceased was there walking drunkenly and there were three others ahead of him. There were other people passing by. Some were drunkards. No one else went where the deceased was being beaten apart from Jimi and 5th accused. Apart from her, no one else showed interest to the happenings. There was moonlight and she could see far. That she mentioned baba Joe in her statement to the police and that was the 4th accused whom she knew as baba Joe or Jimi. She never gave the name Joe to the police and it appeared to be an addition. The 1st accused had occasion to scream once when Likii was burning. She also used to scream when her previous husband was beating her. That she mentioned Gathu in her statement and the said Gathu was the 5th accused. Joe was same as Jimi who is still at large. She denied fabricating the case against the 1st accused for she chased her out of her house due to rent arrears. She testified that she had no grudge with other accused persons.
 9. On cross examination by the counsel for the 3rd, 4th and 5th accused persons, she testified that she has never taken any landlord to court and she denied that she had a habit of moving from one plot to another after falling out with landlords. The 5th accused was her customer as she used to sell cigarettes to him. He lived in Likii but she did not know where and she did not know that he was the 1st accused's tenant. She denied that there were complaints from other tenants about her when she was living in the 1st accused's plot. She denied that the chief was used to remove her from the 1st accused's plot and she left voluntarily for reasons given. That 1st accused bordered where she lived and there was electricity in the plot she was living. That 1st accused habitually raised false alarms with screams and she was not happy with this conduct. In the plots she was staying, there were 7 tenants and the 1st accused plots had about 7 tenants. The assault took about 1 ½ hours and there was noise from the assaulters and the deceased. The tenants at her plot and the 1st accused's plot were at work and no one came out. There were passer-by but they did not stop. She denied that a report was made to the chief that some people were planning to burn the 1st accused's premises and that it was not true that she arranged with other people to burn the 1st accused premises.
 10. On re-examination, she testified that she knew the 4th accused as baba Joe but she was not quite sure whether it was Joe or Jimi. She also knew his son Joe or Jimi who was about the 2nd accused's age. That she was not referring to any other person, it was the 4th accused and his son. That she never had any problems with the accused. She had lived in the plot she was living for two years thus she left the 1st accused's plot two years ago. She had no rent arrears when she left and they were on friendly terms.
 11. PW3, Joseph Gaturuku testified that on the material day, he proceeded to Makutano where he met John Maina, a friend who had invited him for drinks. They drunk until 5:30pm and then they proceeded to another pub run by John Maina's friend at Likii. While there, the deceased who was his friend called and he informed him where he was. The deceased joined them at about 7pm. They were also joined by Boniface Muriithi. About 8:30pm, they decided to go home and they took a short



cut. He was a little ahead of them. He heard a lady screaming behind him and he feared it was crime in progress and he decided to run away and John Maina ran past him. He called John who said he was safe and was already at home. He called Boniface and he said he was okay. He called the deceased but Boniface answered the phone. That he knew Boniface had deceased's phone for safe custody as deceased's pockets were torn. Boniface said he was not with the deceased and that they had run in different directions. The following day, he proceeded to the deceased house but the house was locked. He proceeded to his workplace and he was not there. He called the deceased's boss who informed him that the deceased did not report to work. He proceeded to Nanyuki police station to see whether he had been arrested but he was not there. He checked at his mother's house but he was not there. He later learnt that he had died. He recorded his statement with the police the following day and accompanied the police to the scene.

12. On cross examination by counsel for the 1st and 2nd accused persons, he testified that the deceased drunk a lot that night. He was already drunk when he joined them and he drunk more upon joining them. That all he heard was a lady's scream and she was not saying anything. It was very dark as there were no security lights and could not remember whether there was moonlight. That to his knowledge, the area was prone to crime. That he stated in his statement that it was his parents who advised him to go to the station to make a statement. That he saw a pool of blood at the scene. He did not know the 1st and 2nd accused.
13. On cross examination by counsel for the 3rd to 5th accused persons, he testified that he did not see the woman screaming. He denied that a report had been made of some young men who were harassing members of the public at about the time they were going home along the same route. That he would not know if his friends were harassing people when they were behind him.
14. PW4, John Maina testified that PW3 was his friend. On the material day, he went to PW3's home and at around 12:30pm, they proceeded to a pub in Makutano where they had drinks until 2pm and they proceeded to a pub at Likii where they drunk until 5pm when the deceased joined them. Boniface Mureithi also joined them. They were all taking keg beer and none was taking spirit. At around 8:30pm, they decided to go home. They were all drunk but not staggering. He and PW3 were ahead of the deceased and Boniface. Near Chrisco church, he heard a woman screams behind them. She was not saying anything. He panicked and he ran past PW3 towards town. He could not see the deceased and Boniface as he started running. When he got to town, PW3 contacted him and asked if he was okay. He proceeded home and learnt about the deceased's death the following day. He thereafter recorded his statement with the police.
15. On cross examination by counsel for the 1st and 2nd accused, he testified that he did not know who assaulted the deceased and he did not get to see the woman who was screaming.
16. On cross examination by counsel for the 3rd to 5th accused persons, he testified that he could not see them behind as the place was dark and did not know what happened to the deceased after the screams.
17. PW5, Peter Kamau, the deceased's father testified that he was contacted by his son Anthony who informed him about the deceased's death. On the following day, he proceeded to police station where Anthony and others were. They proceeded to the scene. On 14/03/2018, he identified the deceased's body for post mortem purposes.
18. He testified on cross examination that he did not know the circumstances that led to the deceased's death.
19. PW6 SSGT Martin Imo testified that he was the duty officer when he received a call from a member of the public who informed him that he had seen a group of people chasing about 4 young men who were



- alleged to have been robbing people along Simbas Club and Nanyuki river. He rushed to the scene with other officers where they found a young man who had been subjected to mob justice. He was lying down unconscious under a pile of firewood and 2 old tyres. They removed the pile of wood and the young man regained consciousness and talked to them. He gave them his name as Danson Mugo, his residence, his mother's name and phone number. They rushed him to Nanyuki referral hospital where he was admitted. He had injuries on the forehead and the upper body and on 10/03/2018, he received a call from the hospital and he was informed that the young man had died. That he never established whether he had another name and when he was giving out his name, he appeared to be in pain and his condition was serious.
20. On cross examination by counsel for the 1st and 2nd accused persons, he testified that the initial report was that some people were chasing 4 young men and no names were given. They only found the young man and there was no one else at the scene. He did not know the person who called him and he did not know his name. The deceased did not give any other information.
 21. On cross examination by 3rd to 5th accused's counsel, he testified that the report was that members of the public were chasing 4 young men suspected to be robbers. The scene was in an open area but it was dark. The deceased did not give the details as to what had happened. It appeared he was not willing to tell them what had happened.
 22. PW7 Dr Joseph Karbolo, a pathologist produced the post mortem report as pexhibit1 on behalf of Dr Karen Muthembwa who was on studies. He testified that he had worked with her from 2015 to September, 2018 and during this time, he became familiar with her handwriting and signature which he could easily recognise. That the opinion of the doctor regarding the cause of death was that the same occurred due to multiple head injuries as a result of blunt force trauma. On cross examination by counsel for 1st and 2nd accused persons, he testified that he never looked at deceased's medical record and he would not know how the deceased suffered the blunt trauma injuries.
 23. PW8 IP Francis Kairu was the investigating officer. He testified that he received a call from assistant chief who informed him that someone had been subjected to mob justice. He contacted PW6 and instructed him to go and try rescue the victim. PW6 later informed him that he found victim lying unconscious with injuries all over his body and he had taken him to hospital. On 11/03/2018, the parents accompanied with three young men who claimed they were with the victim reported that he had died. They visited the scene but did not recover anything of interest. That on 21/03/2018, members of the public demonstrated claiming that the deceased's killers were known and a list of 6 people was given by demonstrators who included PW2 who claimed to be a witness. That the deputy OCPD handed over to him three young men and one lady who had reported to the chief that some people wanted to burn their houses. The deputy OCPD instructed the four be charged with murder. That he proceeded to the scene with the suspect and they searched their houses but nothing was recovered of interest. They also arrested another suspect, the 5th accused. The other person who was on the list by name Joe is still at large.
 24. On cross examination by counsel for 1st and 2nd accused persons, he testified that he charged the accused because they were on the list given by the members of the public. He did not know who gave the list of the suspects and he did not know whether PW2 was the leader of demonstrators. He did not take the names of the other demonstrators. That the four suspects had reported to the chief and deputy OCPD that some people wanted to burn their houses and he did not investigate this report. The deputy OCPD did not hand over the list of the suspects but he saw it. He did not record statement of the deputy OCPD who designated him to investigate the matter though he did not instruct him to investigate. All he did was record statement and charge the accused as he was instructed by the deputy OCPD. Nothing incriminating was recovered from the accused persons.



25. On cross examination by counsel for 3rd to 5th accused persons, he changed and testified that he was instructed by the Deputy OCPD to investigate the matter. That the accused had reported that there were some people who wanted to burn their houses and they were referred to the police for protection. They were in the list of the suspects given by members of the public. That he did not mention in his statement that he visited accused's houses.

Defence's case

26. DW1, Margaret Wakini in her sworn defence testified that on 09/03/2018, she was at her home in Likii and about 8.00am, her husband contacted her. Her husband lived in Kararu and he wanted her to take to him planting seeds. She took the seeds to him and she stayed with him until 12/03/2018 when she went back to her home in Likii. On 21/03/2018 while at her home, she heard noises and saw people going towards her plot. Mama Wangari entered her plot and said they should escape as there was a mob of people who were saying they would burn plots. She left the plot and went away and the crowd dispersed without causing any damage. One of her tenants, mama Ciru called her and informed her that they should meet at the chief's office. At the chief's office, there were people there who wanted PW2 to be removed from the area because of her abusive habits and false witness regarding other people. The chief advised them to seek assistance from police and they proceeded to police station where they were directed at the report office but nothing happened. The police took them to her plot and they were ordered to open various houses but nothing was recovered and they were taken back to cells. They were not told why they were being locked up. That the police had a list of names which she learnt PW2 had given them. That she came to know PW2 in 2015 when she was her tenant but by the time of the incident, she had moved to another plot. That she was a bad tenant and treated her and other people with contempt. She had her removed from her plot by assistance of the chief. That PW2's testimony was not true and she was revenging because she had her evicted from her plot and her co-accused had assisted in evicting her. That during her eviction, she had threatened her by saying that she would know that she is called Muthoni. That there was a time PW2 had complained to the police that she had demolished part of the wall of the house she occupied which was false. She testified that she was not at the scene of crime contrary to PW2's assertion.
27. On cross examination, she testified that PW2 was her tenant from 2015 to 2018 and she was troublesome with annoying habits of abusing people though PW2 was not cross examined about her bad character when she testified. That the crowd wanted to burn all plots in the area and was not pin pointing her plot. PW2 did not leave her plot voluntarily but she evicted her on 23/07/2017 as people wanted her out. She testified that she had no hatred towards PW2 but it was her who had a problem with her because of eviction. That her co-accused assisted in evicting her and that is why she made false complaints about them. Her plot had 15 units which she was renting out. That she would not have been charged if PW2 had not made false complaints about her. That she heard people saying a person had been killed near a church in the general area of her plot. 2nd accused was her son living in her plot and the other accused persons were also living in her plot.
28. On re-examination, she testified that the mob said that they should be arrested. That she sought assistance from the chief to evict PW2 since she was violent both verbally and physically. That she did not know that the mob wanted her and her co-accused to be arrested for murder.
29. DW2, Francis Maina testified that he was DW1's husband though they were not legally married but they had one child. He testified that he was staying at Kararu and on the eve of 08/03/2018, he contacted DW1 and requested her to buy maize and beans for planting. She told him she would bring the same the following day. On 09/03/2018 at about 9.00 to 10.00am, she went to his home at Kararu



- where she stayed from 9th to 12th March 2018. He also did not leave the home as it was planting season. He testified that Kararu is about 15 kilometres from Likii.
30. On cross examination, he testified that she visited DW1 many times at her plot in Likii. Her plot had 17 units. He knew 2nd accused, DW1's son but did not know whether the other accused persons lived in the 1st accused plot. He maintained that he stayed with DW1 from 9th to 12th March and he had asked her to bring the seeds since she was near town.
31. DW3, Paul Ndamburi, the 2nd accused testified that in 2017, he was living with his mother at Likii. On 09/03/2018 at 5:00pm, his sister Lucy requested him to go to her home to take charge since she was going to Nyahururu. He left at 3:00pm and stayed in his sitter's home and he returned home on 10/03/2018. He heard that someone had been beaten at the river. On 21/03/2018, he was at home when they heard some noises and mama Wangari told DW1 that those people were coming to burn the area. DW1 advised that they run and they saw PW2 leading the crowd. That the people left a message that those who had killed the deceased be arrested. That DW1 was called by mama Wangari who informed her that there was a meeting at chief's office. Together with neighbours, they made a complaint about PW2 to the chief who advised them to go to police station. No O.B was written but they were directed to the OCPD where they found PW2 with a piece of paper which she gave to the OCPD. They were locked up and PW2 said they will rot in jail. That on 23/07/2017, the chief, two police officers and DW1 had told PW2 to remove her things but she refused and the chief sought his assistance to remove PW2 belongings. PW2 said they will get to know who she was after they removed her from the plot. That it is the grudge that made him arrested. He testified that he did not know the deceased and he was at his sister's home when the incident happened. That his name and that of his mother were not on the list that PW2 gave the OCPD. That none of the accused's names were on the list.
32. On cross examination, he testified that before going to his sister's home, they sought permission from DW1. They contacted her through the phone. He was alone at his sister's home and he arrived at 6:30pm. He did not hear any scream or noises. That PW2 was their tenant for 2 years. She could pay rent intermittently and she was difficult as she would abuse and fight other tenants. He went to his plot and found his wife who informed him that she heard noises but she did not leave the house. On 21/03/2018, the crowd wanted to burn the village and the 4th accused person advised that they seek help from the chief. That the names on the list were read and his name was not on the list. PW2 pointed at him as baba Mark but he denied since he did not have a male child. That PW2 had stated that they shall know who she is after they evicted her. At the police station, they were not listened to. That they were a group of 100 people and PW2 picked them among the group. That he did not know the deceased and has never met him and he did not commit the offence. That from 09/03/2018 to 21/03/2018, he remained in Likii since he had a clear conscious. That he would have ran away if he had committed the offence.
33. DW4, David Kirimi testified that on 09/03/2018 together with the 4th accused, they proceeded to Naromoru where they had a project which his father was overseeing. They worked until 11:00pm and they could not get a vehicle back to Likii so they went to 4th accused's sister's home at Naromoru and they returned to Nanyuki the next day. They found three women at the river who asked them if they knew the person who had been beaten.
34. On cross examination, he testified that on 09/03/2018, he was with the 4th accused at Naromoru as his father had contacted him and gave him a job though he did not have the record to show that he was at the site that day. A register was kept and his name was on the register but he could not get it since he is in prison. His father died in 2021. They worked till 11:00pm. They returned home on 10/03/2018.



- That the people in their plot would have heard screams. His wife told him that she heard screams. PW2 was a troublesome person and had even approached his wife and as tenants, they had told DW1 that if PW2 is not evicted, they would vacate. That the deceased was killed in their area. That some of the crowd were left outside and only 20 entered the OCPD office. That he was not Baba Mark and PW2 knew him as Baba Fiona. The co-accused were DW1's tenants. His mother had reported PW2 to the chief. He did not know the names of the people read out by the OCPD. None of the accused persons were on the list. PW2 said that he was a son to DW1 and was at the incident. He heard people on 10th stating that the deceased had died. He had been killed at the river which was about 1 ½ kilometres from their plot. That there was information that the deceased was killed by people from their plot.
35. On re-examination, he testified that they signed off the register at 11:00pm. His father was the foreman. He could have been his witness but he died. There was a storeman who was keeping the register.
 36. DW5 David Karaya testified that on 09/03/2018, they went to Naromoru with the 3rd accused for work. They worked until 11:00pm and they could not get a vehicle back to Nanyuki. They went to his sister's home where they spent the night. They went back home the following day and they met three women at the river who asked them if they knew the person who had been beaten. His wife informed him about a person who had been beaten at the river. On 21/03/2018, he went to the labour offices and he was contacted by the 1st accused who informed him about people who wanted to burn the village. He advised her they report to the chief who referred them to police station. While at the OB section, the officer referred them to the OCPD office where they found PW2. There was a list which the OCPD read and his name was not there. PW2 said that he was living in the 1st accused's plot and he was also involved. That PW2 said they would know who she was. That on 23/07/2017, the landlady, the chief and two police officers asked them to remove PW2's items from the house and PW2 abused them and told them that they will go to jail and it is this grudge that has made him to be in jail. That he did not know the deceased and he was not on the list given to the OCPD as PW2 pointed him out. PW2 was troublesome as she used to abuse the land lady.
 37. On cross examination, he testified that there was a register where their names were recorded but the person who kept the register is deceased. They spent the night at Jacinta Wanjiku's home. The river was about 165 metres from the plot. That he did not know how the deceased was killed. PW2 kept a grudge.
 38. DW6, Boniface Gathu testified that on 09/03/2018 at 3:30 pm, Leputuki went to his garage and gave him a task. The motor vehicle was at Nanyuki-Doldol highway at Digiri. They went there and they spent the night there. They woke up the next day and repair work commenced. They got back to Nanyuki at 7:00pm and repair works commenced. On 21/03/2018, police officers went to his garage and asked for him, they mentioned his name. He was taken to police station and while at the OB section, he was asked whether he knew the accused persons and he said they were from the same plot. He was informed that someone had been killed and he was involved. PW2 was his neighbour and at one time she poured water on his door and he reported her to the land lady. He was not her customer. That he did not see the list. The investigating officer was just following what PW2 was saying. The investigating officer went to do a search.
 39. On cross examination, he maintained that he was at Doldol on 09/03/2018 and he continued working even on the following day. That he could not call Leputuki since he was not well used to him. He was with him on 21/03/2018 when he was arrested and he accompanied him to the station but he was chased away. The communication with him got lost. Between 9th and 21st March 2018, he continued living in DW1's plot and he had not heard of any incident.
 40. On re-examination, he testified that from 10th march to 21st March, he was in Nanyuki working normally.



Prosecution's submissions

41. The State counsel submitted that there was direct and circumstantial evidence which was reliable. That PW2 was able to see the accused persons chase after the deceased while shouting 'thief thief'. They managed to catch him and assaulted him using pieces of timber and a metal rod which resulted to the injuries that caused his death. That the death and cause of death of the deceased was proved beyond reasonable doubt as PW7, Dr. Joseph Karbolo testified that the cause of death was as a result of multiple head injuries as a result of blunt force trauma. As to whether there was proof that the accused persons caused the deceased death, he submitted that the incident occurred at night but PW2 was at the scene and managed to positively identify the accused persons. The accused persons and PW2 knew each other as the accused persons admitted since they were neighbours. That their defence was based on a grudge between PW2 and the 1st accused but this was not substantiated as there was no evidence from an independent witness. That all the accused persons also claimed that they were not in the premises at the night of the incident and somehow, they were all back on 21/03/2018 at the time of the demonstration hence this line of defence should be ignored as it raises eye brows. That from the evidence, the accused persons caused the death of the deceased and the death was unlawfully caused.
42. As to proof of malice aforethought, he submitted that although the murder weapon was not recovered, the post mortem showed that the accused died as a result of multiple head injuries as a result of blunt force trauma. PW2 saw the accused persons hitting the deceased with pieces of timber and a metal rod. They further called for a tyre to set the deceased ablaze. Their action hence shows that they had all the intentions to murder the deceased.
43. As to identification, he submitted that there was direct evidence from PW2 which placed the accused persons at the scene. The accused persons and PW2 were not strangers as admitted. Even though it was at night, PW2 was clear in her testimony that she was present at the scene. That an identification parade was not necessary and lighting should not be the only factor that the court should consider. There were other factors like the duration of the witness's exposure to the accused, prior knowledge and relationship. That if a witness is able to recognise the accused, an identification parade may not be necessary. He submitted that the elements of murder had been proven.

1st and 2nd accused's submissions

44. Counsel submitted that the 1st accused provided an irrefutable alibi, DW2 to support her testimony that she was away visiting her husband in Kalalu on the material night hence absent from the scene of crime. The 2nd accused was also away at his sister's house. That the prosecution failed to disapprove 1st accused alibi which rebounds in accused's benefit as was held in *Karanja v republic* (1983) KLR 501 that the burden of proving falsity of an accused's defence of alibi lies with the prosecution.
45. Further, the prosecution's evidence was that the deceased was attacked by multiple assailants and the prosecution failed to provide any evidence linking or proving the specific actions of the 1st and 2nd accused that could have led to the deceased's death. The prosecution failed to place material before court that the 1st and 2nd accused were at the scene and they failed to exclude the possibility that the deceased was killed by other persons. He placed reliance on the case of *Ali Salim Bahati & another v Republic* [2019] (KLR) where the court held that it was difficult in the case of mob justice to pin point that a blow or assault by a particular person in the group led to the victim's death.
46. That the prosecution relied on the evidence of PW2 whose credibility was compromised by her bias towards the accused persons. That she was unreliable as there was a pre-existing hostility towards the accused persons stemming from her eviction from 1st accused's premises. There was an indication of



personal vendetta as she admitted of a sour relationship which tainted her objectivity and there was violation of 'impartial witness' as per Section 124 of the *Evidence Act* which requires witnesses to testify free from malice or vested interest. That her testimony was inconsistent as she claimed to have identified the accused persons assaulting the deceased despite admitting that there was no street lighting. She further testified that there was a significant distance between her shop and the scene of the crime. On cross examination, she acknowledged the presence of passers-by but had previously indicated that she was alone. That her testimony defies belief as she testified having witnessed a prolonged violent attack lasting 1 and ½ hours with a commotion from the deceased and the attackers yet she took no steps to intervene, seek help or raise an alarm but went back home, cooked and slept showing no concern to the deceased. That the contradiction and unnatural behaviour undermined her credibility and rendered her testimony inconsistent and contrary to human conduct. Further, her testimony was uncorroborated as nothing was found with or in the accused persons' houses or at the scene linking the accused to the murder.

47. He submitted that PW8 testified that he visited the scene and the accused persons houses but nothing was recovered of interest. He further testified that he was handed over a list with the names of the four accused and he was instructed by the Deputy OCPD to charge the accused persons. That PW8 failed to discharge his duty to conduct a thorough and impartial investigation and failed to tender any evidence linking the accused persons to the death of the deceased. He failed to follow standard investigative procedure to establish culpability which was a fundamental breach of due process which rendered the prosecution's case fatally defective. He submitted that the prosecution has failed to prove that the death of the deceased was as a result of an unlawful act or omission on the part of the 1st and 2nd accused person and has failed to prove malice aforethought on their part as what the prosecution placed before this court was uncorroborated evidence of a single witness whose credibility was in question due to her previous relationship with the accused persons and her personal vendetta.

3rd, 4th and 5th accused persons submissions

48. Counsel submitted that PW8 confirmed during cross examination that he did not carry out thorough investigations hence the glaring gaps in the prosecution's evidence. He further testified that no murder weapon or anything of interest was recovered from the scene and the houses searched, he confirmed that based on non-existent investigations, there was no evidence to link the accused persons to the murder, the 3 accused persons were charged based on a list handed over to PW8 by the deputy OCPD who did not record a witness statement nor was he called as a witness and the accused persons were arrested two weeks after without any evidence but because of a mere list.
49. As to whether the accused persons were identified as the assailants, she submitted that none of the witnesses were able to demonstrate that the accused persons were fighting with the deceased and there was no malice on part of the accused persons. That identification parade was not carried out and the evidence that was adduced by the prosecution was that of recognition. However, PW2 testified that it was at night and there was no street light but only light from the moonlight. She testified that the distance was about 165 meters from her gate. Since it was dark, identification was more difficult and needed through examination. That in a case involving mob justice where multiple individuals are involved, identification of the accused is central to the prosecution's case and in this case, identification parade was not carried out, no witness positively identified the accused at the scene and there is no direct or circumstantial evidence linking the accused persons to the events of that night. Hence this created doubt in the prosecution's case. That PW2 testified that she identified the 3 accused persons while standing at the gate of her homestead during the night under moonlight. She therefore erroneously identified them yet no identification parade was conducted which was a grave error that would lead to a miscarriage of justice.



50. She submitted that the 3rd and 4th accused raised a defence of alibi and the prosecution failed to dislodge or contradict their account as the prosecution made no attempt to dislodge the alibi defence. The investigating officer admitted that he neither verified the accused persons where about on the material night and did not question any person who might have been with them. That there was no credible evidence to show that the accused persons were near the scene of crime as the investigating officer admitted that he did not conduct independent investigations which admission was fatal to the prosecution's case. There was therefore no evidential bridge connecting the accused persons to the deceased's death. That no item was recovered from the scene that could have linked the accused persons and the murder weapon was not recovered. That material witnesses were not called including the deputy OCPD who could have explained how he obtained the list of suspects, whether investigation preceded the issuance of the list and whether he acted on any independent information or was merely responding to unverified public opinion based on hearsay. That failure to call the Deputy OCPD shows that his testimony would have been adverse to the prosecution's case. The chief was also not called to testify despite having direct knowledge of the events surrounding the arrest and could have confirmed that the accused persons voluntarily went to his office to report a threat to burn their homes which shows that the accused were not perpetrators fleeing crime but were just seeking assistance from the authority. That his statement would have assisted the court in assessing the accused persons' credibility yet the prosecution chose not to call him despite recording a statement which shows that his testimony would not have supported the prosecution's case.
51. I have considered the charge herein, the evidence adduced by both the prosecution and the defence as well as the learned submissions by counsel on record. I have put into account the applicable law specifically the law on the degree of prove in a criminal matter and the law of evidence and the legal principles surrounding identification of a suspect by a witness.
52. The broad issue for determination is whether the prosecution has through the evidence adduced proved the charge against each of the accused persons to the legal threshold set in law.
53. Auxiliary to this broad thematic issue for determination, the court will be looking at whether the ingredients of the offence of murder were proved. Section 203 of the Penal Code defines murder in the following terms: "Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder." Thus, the central ingredients of the offence of murder are
1. The fact of death.
 2. The fact that the deceased's death was caused by an unlawful act or omission.
 3. That the accused committed the unlawful act which caused the death of the deceased; and
 4. That the accused had malice aforethought.
54. Section 206 defines malice aforethought in the following terms:
- " 206. 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.”

55. I will proceed to address the individual ingredients sequentially.

(a) The death of the deceased

56. Dr Joseph Karbolo, PW7 a pathologist produced the post mortem report as pexhibit1 on behalf of Dr Karen Muthembwa. The report confirmed that the deceased died as a result of multiple head injuries due to blunt force trauma. Thus, the deceased did not die out of natural causes which leads me to the question of who or what caused the death.

b). The fact that the deceased’s death was caused by an unlawful act or omission.

57. As indicated above, the deceased did not die a natural death. The nature of injury rules out an accident and defies any other explanation other than the act of a human hand. The multiple head injuries due to blunt force trauma is a clear demonstration of the fact that the act was through a deliberate unlawful act. Who then was responsible for this unlawful act?

Proof that accused committed the unlawful act which caused the death of the deceased

58. The accused persons have been arraigned before this court as the persons who caused the death of the deceased. Connecting them directly to this offence is the evidence of PW2 who testified as an eye witness.

59. Her evidence was that she first saw the deceased on the date of the incident. She knew the 1st accused as she was living in the plot neighbouring their plot. She knew her as Mama Kabura or Mama Paul and she knew her children. She had known her for about 2 years. The 2nd accused, was 1st accused son. She knew the 3rd accused as Baba Mark and he was staying in the same plot as the 1st accused. She had known him for about 5 months. She also knew the 4th accused as baba Jimi and was living in the same plot as the 1st accused. She had known him for about 3 months. She did not know the 5th accused’s name but she knew that he was working at a motor garage nearby and he was her customer at the kiosk. She had known him for about 2 years. That on 09/03/2018 at about 8:00pm, she was closing her kiosk. There were many people passing by. There was no street light but there was moonlight and she could see clearly a distance of like 165 steps. She heard screams from the 1st accused’s house with shouts of ‘thief thief’ in Kikuyu and she was calling for help in Kikuyu. She stepped out of her gate and she saw the 1st accused standing outside her gate screaming in company of the 2nd accused and one Jimi. The deceased was also there. There were other people who were passing by. The deceased appeared very drunk and he was in company of three other people who were ahead of him.

60. She stated further that the 2nd accused and Jimi chased the deceased while shouting ‘thief thief’ and the deceased was felled about 30 meters from where she was. The 1st and 2nd accused and Jimi then removed timber from the fence and started beating the deceased with the same. The 3rd and the 4th accused then joined. The 4th accused was Jimi’s father. The 5th accused appeared from town side and demanded kerosene to be brought to burn the deceased. All accused kept hitting the deceased with the pieces of wood from the fence but as they would break, 3rd accused said he will get a piece of metal. He



went into his house and came out with a piece of metal which was about 3 feet long with a thickness of about 2 ½ inches. The 3rd accused hit the deceased with the said metal once on the head and he fell quiet. That while he was being beaten, he was pleading that he was from Likii and produced his ID. He was pleading that he was not a thief, that he had been to his mother's place at Likii and should be taken there. That she ran away after the deceased was hit with the metal rod but she did not go far. The 5th accused demanded that she sell paraffin to him but she was not selling paraffin at her kiosk.

61. She added that the 2nd accused and another person not before court brought a mkokoteni tyre and gave it to the 5th accused and they tried to light up the tyre but it did not burn. They gave up and left the deceased there. She then went to her home and she cooked and slept. The following morning, she went outside and saw many vehicles and there were people at the scene. She approached and saw blood and grass that showed signs of struggle. She did not see the pieces of wood or the metal bar that had been used to assault the deceased. The accused persons would also go and look. There was a woman in great distress who she learnt was the deceased mother and she narrated to her what she had seen the previous night. She secretly told her the persons who had assaulted the deceased and where they lived. She accompanied them to Nanyuki police station. She later on recorded her statement. She testified that nothing had been stolen from the 1st accused's plot. That she had not quarrelled with the accused persons. That the deceased was only attacked by the 5 accused persons and Jimi, 4th accused's son.
62. Apart from this eye witness account of the incident, we have the evidence of PW6 SSGT Martin Imo who testified that he was the duty officer when he received a call from a member of the public who informed him that he had seen a group of people chasing about 4 young men who were alleged to have been robbing people along Simbas Club and Nanyuki river. He rushed to the scene with other officers where they found a young man who had been subjected to mob justice. He was lying down unconscious under a pile of firewood and 2 old tyres. They removed the pile of wood and the young man regained consciousness and talked to them. He gave them his name as Danson Mugo, his residence, his mother's name and phone number. They rushed him to Nanyuki referral hospital where he was admitted. He had injuries on the forehead and the upper body and on 10/03/2018, he received a call from the hospital and he was informed that the young man had died. That he never established whether he had another name and when he was giving out his name, he appeared to be in pain and his condition was serious.
63. There is also the evidence of PW8, IP Francis Kairu who was the investigating officer. He testified that he received a call from assistant chief who informed him that someone had been subjected to mob justice. He contacted PW6 and instructed him to go and try rescue the victim. PW6 later informed him that he found victim lying unconscious with injuries all over his body and he had taken him to hospital. On 11/03/2018, the parents accompanied with three young men who claimed they were with the victim reported that he had died. They visited the scene but did not recover anything of interest. That on 21/03/2018, members of the public demonstrated claiming that the deceased's killers were known and a list of 6 people was given by demonstrators who included PW2 who claimed to be a witness. That the deputy OCPD handed over to him three young men and one lady who had reported to the chief that some people wanted to burn their houses. The deputy OCPD instructed the four be charged with murder. That he proceeded to the scene with the suspect and they searched their houses but nothing was recovered of interest. They also arrested another suspect, the 5th accused. The other person who was on the list by name Joe is still at large.
64. Thus from the record, the only direct evidence over the incident is that of PW2. The other crucial evidence is that of PW6, the duty officer on the material night and PW8, the investigating officer. It would be expected that their evidence would be a necessary voyage of fact finding and conclusions that



would tie up any loose ends in the prosecution's case and lead to the decision to charge. We shall soon see how well this duty was undertaken.

65. In essence therefore, this case turns on the evidence of PW2 with the emerging issue being the identification of the accused persons as the perpetrators of the heinous act. Notably, on record is the evidence of a single identifying witness.
66. The burden of proof in criminal cases is borne by the prosecution. In this case the burden of proof is on the prosecution. *The constitution* recognizes the presumption of innocence on the part of an accused person bestowing no duty at all on an accused person to prove his innocence. Even where an accused opts to give no evidence as is his right, the legal burden never shifts.
67. The law is long settled on the matter. In *Republic v Silas Magongo Onzere alias Fredrick Namema* [2017] eKLR, R. Nyakundi J, stated;

“As to what constitutes the burden of proof beyond reasonable doubt the case of *Miller v Minister of Pensions* [1947] 2 ALL ER 372 – 373 provides as follows in a passage alluded to me considered the greatest jurist of our time Lord Denning: “That degree is well settled. It needs not reach certainty, but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond the shadow of doubt. The law would prevail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility of his favour which can be dismissed with the sentence of course it is doubt but nothing short of that will suffice.”

68. For emphasis, in our criminal justice system there is no duty on the accused to prove anything on the allegations of a criminal nature filed by the state in a court of law. The burden of proof of an accused's guilt rests solely on the prosecution throughout the trial save where there are admissions by the accused person. In crimes where certain presumptions are made, they place an evidentially burden on the accused- never the legal burden of proof.
69. Where the prosecution's case rests on the identification of an accused person by a witness(s), the law again has been settled over time. This court is alive to the stringent legal requirement that the circumstances of identification of a suspect in a criminal case must be such that the identification is free from error. There is the further distinction between identification of a person already known to the witness before (recognition) and the identification of a stranger. In both cases, the court must consider whether conditions of identification are difficult.
70. In the case of *Faith Muthoni M'ngondu & 3 others v Republic* [2018] eKLR, the Court of Appeal addressing itself to the principles applicable where identification of a perpetrator is disputed stated;

“The guiding principles that the learned Judges took into consideration when addressing the appellants' challenges to their identification/recognition at the scene of the robbery are the same principles we are enjoined to apply in determining the same issue as now placed before us. These have now been crystallized in a long line of cases. See *Cleophas Otieno Wamunga versus Republic* [1989] KLR; *Paul Etole & Another versus Republic* [2001] eKLR; and *Francis Kariuki Njuru & 7 Others versus Republic* Criminal Appeal No. 6 of 2000 (UR). They may be summarized as follows:

- (i) Evidence of visual identification in criminal cases can bring about miscarriage of justice. It is for this reason that a court is enjoined to examine such evidence carefully to minimize such danger.



- (ii) Whenever the case against the defendant depends wholly or to a great extent on the correctness of one or more identification of the accused which he alleges to be mistaken, the court must warn itself of the special need for caution before convicting the defendant in reliance on the correctness of such identification/ recognition.
- (iii) The court has an obligation to examine closely, the circumstances in which the identification by each witness come to be made.
- (iv) The court also had a duty to remind itself of any specific weaknesses which may have appeared in such identification evidence.
- (v) It is true that recognition may be more reliable than identification of a stranger, but even when the witness is purporting to recognize someone whom he knew, the court should remind itself that mistakes in recognition of close relatives and friends are sometimes made.
- (vi) Evidence relating to identification has to be scrutinized carefully and should only be accepted upon if the court is satisfied that the identification was positive and free from any possibility of error.
- (vii) Among the factors surrounding evidence of identification/recognition that a court is required to inquire into is whether the witnesses gave either the description or the names of the attackers to either the police or persons who come to the scene of the attack soon after the attack and at the earliest opportunity”.

71. In the case of *Wamunga v Republic* (1989)KLR 426 cited by the Court of Appeal above, the court had put it plainly thus;

“It is trite law that where the only evidence against a defendant is evidence of identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of conviction”

72. The other relevant consideration in this matter is the question of the evidence of a single identifying witness which as alluded to above obtains in this trial.

73. The law is that uncorroborated testimony of a single identifying witness can be sufficient to support a conviction, but courts approach such evidence with caution, thoroughly testing the reliability of the identification due to the fallibility of human observation. The court must a carefully examine factors like lighting, the witness’s opportunity for observation, and any inconsistencies before relying on the identification.

74. The key factors for reliability of a single identifying witness as gleaned from a plethora of case law are;

a. Conditions:

The lighting, visibility, and overall conditions at the time of the observation.

b. Proximity and Opportunity:

The witness’s closeness to the scene and the duration of their opportunity to observe the accused.



- c. Witness's Prior Knowledge:
The extent of any prior relationship or familiarity the witness had with the accused.
 - d. Description Accuracy:
The detail and accuracy of the witness's description of the accused, considering their features, voice, build, and dress.
75. In evaluating all the above conditions, the court takes a cautionary approach because of the potential for mistaken identity. Indeed, when convicting on the evidence of such a witness, the court must warn itself of the danger therein. In *Maitanyi vs Republic* [1986] KLR 198, the Court of Appeal held as follows:
1. Although it is trite law that a fact may be proved by the testimony of a single witness, this does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult.
 2. When testing the evidence of a single witness a careful inquiry ought to be made into the nature of the light, available conditions and whether the witness was able to make a true impression and description.
 3. The court must warn itself of the danger of relying on the evidence of a single identifying witness. It is not enough for the court to warn itself after making the decision, it must do so when the evidence is being considered and before the decision is made.
 4. Failure to undertake an inquiry of careful testing is an error of law and such evidence cannot safely support a conviction”.
76. In the instant trial, PW2 testified that she saw all the accused in the act of beating up the deceased from a distance of 165 steps. That she knew all the accused and it is only the 5th Accused that she did not know by name. She stated that there were no street lights, there was moonlight and she was able to see and identify all the accused and another person not in court. The intensity of the light was not stated. She on cross examination denied any grudge with any of the accused.
77. This being evidence of a single identifying witness must be treated with caution. All the accused in their defence gave alibi evidence stating they were away from the scene at the material time. These alibis were not raised during the prosecution’s case in cross examination and in essence therefore were raised very late in the day. Having considered all the alibis given by the accused, I find it incredibly strange and too coincidental to beg belief that all the accused persons had reasons to be away at the material time. But a quick reminder that the onus was on the prosecution case to prove their case and not the accused to prove their alibis.
78. As held by the Supreme Court of Nigeria held in *Ozaki and another v The State*, for a defence to be rejected it must be incredible and that the defence must be weighed against the evidence offered by the prosecution.
79. In *Uganda v Sebyala& Others*, Case No. 130 of 1988.6{1969} EA 204 the court stated;
- “The accused does not have to establish that his alibi is reasonably true. All he has to do is to create doubt as to the strength of the case for the prosecution. When the prosecution case is thin an alibi which is not particularly strong may very well raise doubts.”



80. The accused has only what is referred to as the evidential burden which means the duty of adducing evidence or raising the defence of alibi. Once an accused person discharges the evidential burden of adducing evidence of alibi, it's the duty of the prosecution to disprove it. The duty of the court is to test the evidence of alibi against the evidence adduced by the prosecution and if there is doubt in the mind of the court the same is resolved in favour of the accused. (See *Ortese Yanor & Others vs The State* {1965} N.M.L.R. 337.)
81. Back to PW2's evidence. Whereas on the face of it the evidence may appear to be credible, what followed and specifically the nature of investigations carried out throws a spanner in the works. Firstly, she states that there were other persons who were passing by the scene at the time of the incident. Who these people were and what they did on witnessing the incident is not stated. Why none was a witness in the matter is also inexplicable. PW2 states that the following morning she saw many vehicles at the scene. She went there and among the people present was a distressed woman whom she learnt was the mother of the deceased. She secretly told her the persons who had attacked her son. She went with the team to the police station.
82. From that narrative, it is plain and obvious that the suspects in the murder of the deceased were named early in the investigation. This brings into the picture the evidence of PW6 and PW8. On his part PW6, the then duty officer told the court that he received a call from a member of the public who informed him that someone had been subjected to mob justice. He went to the scene and found the deceased injured. PW6 does not name this person and from the evidence on record, there is no indication whether this person was traced for purposes of giving evidence of what he had transpired at the scene. I take judicial notice of the fact that in this era of mobile telephony, such a tracing was possible.
83. PW8 instructed PW6 to go to the scene after he was called by an assistant chief. He added that on 21/03/2018, members of the public demonstrated claiming that the deceased's killers were known and a list of 6 people was given by demonstrators who included PW2 who claimed to be a witness. That the deputy OCPD handed over to him three young men and one lady who had reported to the chief that some people wanted to burn their houses. The deputy OCPD instructed the four be charged with murder. That he proceeded to the scene with the suspects and they searched their houses but nothing was recovered of interest. They also arrested another suspect, the 5th accused. The other person who was on the list by name Joe is still at large.
84. From the evidence of PW8, the only arrests made was on 21/03/18, about 12 days from the incident. And how did the arrest come about? This was after members of the public demonstrated claiming that the deceased's killers were known and a list of 6 people was given by demonstrators who included PW2 who claimed to be a witness. The decision to charge was through the direction by the Deputy OCPD who handed over to PW8 three young men and one lady who had reported to the chief that some people wanted to burn their houses with instructions that they be charged with murder.
85. Gleaned from the preceding paragraph, PW8, the investigating officer never made an independent decision to charge the accused persons based on his own investigation. The Deputy OCPD who directed PW8 to charge the accused did not testify to explain his decision.
86. Further, it is not clear why the accused were arrested so much later, yet, if one was to go by the evidence of PW2, the suspects were known and indeed PW2 had named them to the mother of the deceased the next day after the incident and PW2 had accompanied the team to the police station the next day and the logical deduction would be that she told the police the names and identities of the suspects.
87. It becomes very difficult therefore to reconcile the evidence of PW, the eye witness with the events following the incident especially the actions and evidence of PW6 and PW8 and to a large extent the



action by the mentioned Deputy OCPD. The begging question would be why was a list of the suspects necessary and by who and how was it drawn?

88. The level and quality of investigations in this case was wanting. This, in my view, is a classic case of poor and incomplete investigations, a sad occurrence given the gravity of the charges herein where a human life was lost.
89. The net effect of the foregoing is that in the circumstances of this case the alleged identification of the accused persons by PW2 is vitiated. Germinating seeds of doubt are cast to the identification by the late arrest of the suspects who ought to have been arrested immediately after if they were actually known and by the apparent baseless instruction by a deputy OCPD directing the charging of the accused following demonstration by members of the public and a list of suspects supplied whose genesis is not explained and neither was it presented in court.
90. The prosecution has therefore failed to prove that the accused committed the unlawful act which caused the death of the deceased
91. Having so found, the issue whether the accused had malice aforethought is moot.
92. With the result that the prosecution has failed to prove its case beyond reasonable doubt. The benefit of doubt goes to all the accused persons who are hereby acquitted.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF OCTOBER, 2025.

A.K. NDUNG’U

JUDGE

