



**In re Public Inquest into the Death of Careen Chepchumba Kili
(Inquest 9 of 2012) [2018] KEMC 89 (KLR) (22 May 2018) (Judgment)**

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**REPUBLIC OF KENYA
IN THE KIBERA LAW COURTS
INQUEST 9 OF 2012
CN ONDIEKI, SRM
MAY 22, 2018**

JUDGMENT

Part I: Introduction

1. This is a forlorn story. It is a story of an educated, refined, erudite and vivacious young lady blessed with a master stroke instinct.
2. Born on the 9th day of February 1986 in the then Nandi District, to SDA devout parents who, it seems to me, could not suffer fools gladly, Careen Chepchumba Kili (herein after referred to as Careen) was the firstborn, a Telecommunications Engineering graduate from the University of Eastern Africa, Baraton, main Campus. An employee of Kenya Power Limited at the material time serving as a Telecommunications Support Assistant (in the Department of Information Technology and Telecommunication), Careen, as manifested to me, was destined for bigger things.
3. Gathering from accounts of witnesses, Careen comes across as a go-getter. Like many of her city peers, and this did not amaze this court, Careen depicted a picture of a young person who was brought up in religious environment but would occasionally drift from the teachings and get off at a tangent. Notwithstanding the fact that she comes across as street-smart, this court gathers that she was unapologetically naïve in matters pertaining basic financial management and the allures of social life. The good lady went into a borrowing frenzy, a behaviour that was unconventional and eccentric to the Careen known to her dear parents, siblings and friends.
4. Further, some handwritten notes¹, which were recovered from her apartment, offered this court a glimpse into her life. In the ordinary life of a young city dweller, Nairobi in mind, the diary is clouded with oblivion and pointlessness. With siege mentality and diaries full to the brim with activities hard to account for, the life of a young city dweller seems to have relegated matters religion to the back burner. And so, this court was pleasantly shocked upon learning that a young city dweller that was Careen, she could find time to not only to read the word of life but also meditate upon it. By all standards, this is exemplary.

¹ See exhibits 18, 19, 26 and 27.



5. From the said notes, Careen portrays a picture of a lady who could find time to reconnect with her creator and meditate about the word of life. It paints a picture of a lady who had a burning desire to be on the right side of history when the Lord finally returns, but for sways, strong sways for that matter, of this world.
6. Unfortunately, as we shall learn later, like many of us and as recorded in the holy book (Mathew 26:41)²; whereas the spirit was always willing, the muscle was occasionally but eminently weak.
7. This court will fail if it omits to make mention of the contents thereof.
8. In an undated note (herein below produced as exhibit 18) for instance, Careen records her chronicles in referring to the book of life. She records and probably reads from the book of 2nd Peter 3:8-10³, Habbakuk Chapter 1⁴, Titus 3:1⁵ and Hebrews 13:4⁶.
9. Careen does not stop there. On another day she continues to record her reading and meditation chronicles in another undated note (herein below produced as exhibit 19) entitled “Year of Grace”. In this note, she records and probably reads Luke 13:8-9⁷, Proverbs 11:9-19⁸ and questions herself “how

² Good News Bible (GNB) Version.

³ GNB Version reads: - “8 But do not forget one thing, my dear friends! There is no difference in the Lord’s sight between one day and a thousand years; to him the two are the same. 9The Lord is not slow to do what he has promised, as some think. Instead, he is patient with you, because he does not want anyone to be destroyed, but wants all to turn away from their sins.10But the Day of the Lord will come like a thief. On that Day the heavens will disappear with a shrill noise, the heavenly bodies will burn up and be destroyed, and the earth with everything in it will vanish.”

⁴ GNB Version reads: - “1This is the message that the LORD revealed to the prophet Habakkuk.

Habakkuk Complains of Injustice

2O LORD, how long must I call for help before you listen, before you save us from violence? 3Why do you make me see such trouble? How can you endure to look on such wrongdoing? Destruction and violence are all round me, and there is fighting and quarrelling everywhere. 4The law is weak and useless, and justice is never done. Evil people get the better of the righteous, and so justice is perverted.

The LORD’s Reply

5 Then the LORD said to his people, “Keep watching the nations round you, and you will be astonished at what you see. I am going to do something that you will not believe when you hear about it. 6I am bringing the Babylonians to power, those fierce, restless people. They are marching out across the world to conquer other lands. 7They spread fear and terror, and in their pride they are a law to themselves. 8“Their horses are faster than leopards, fiercer than hungry wolves. Their horsemen come riding from distant lands; their horses paw the ground. They come swooping down like eagles attacking their prey. 9“Their armies advance in violent conquest, and everyone is terrified as they approach. Their captives are as numerous as grains of sand. 10They treat kings with contempt and laugh at high officials. No fortress can stop them — they pile up earth against it and capture it. 11Then they sweep on like the wind and are gone, these men whose power is their god.”

Habakkuk Complains to the LORD Again

12 LORD, from the very beginning you are God. You are my God, holy and eternal. LORD, my God and protector, you have chosen the Babylonians and made them strong so that they can punish us. 13But how can you stand these treacherous, evil men? Your eyes are too holy to look at evil, and you cannot stand the sight of people doing wrong. So why are you silent while they destroy people who are more righteous than they are?14How can you treat people like fish or like a swarm of insects that have no ruler to direct them? 15The Babylonians catch people with hooks, as though they were fish. They drag them off in nets and shout for joy over their catch! 16They even worship their nets and offer sacrifices to them, because their nets provide them with the best of everything. 17Are they going to use their swords for ever and keep on destroying nations without mercy?”

⁵ GNB Version reads: - “1Remind your people to submit to rulers and authorities, to obey them, and to be ready to do good in every way.”

⁶ GNB Version reads: - “1Keep on loving one another as Christian brothers and sisters.”

⁷ GNB Version reads: - “8But the gardener answered, ‘Leave it alone, sir, just one more year; I will dig round it and put in some manure. 9Then if the tree bears figs next year, so much the better; if not, then you can have it cut down.’”



much did my life in this refelct that I am a child of God?” In this note, she closes the day with Mathew 6:12⁹ and John 15:5.

10. In another undated note (herein below produced as exhibit 26), Careen records her biblical perspective regarding election of servants in church. She states thus:-

“prayer is the key component to any church election. Church election should be approached prayerfully. Fasting, praying and dedication of elected persons. Only faithful and diligent christians do truly minister with humanity. They are called and honour God. I am an eye in administration.”

11. And yet in another undated note (herein below produced as exhibit 27) entitled “Three things that happen when the Lord calls you,” Careen records them as follows:- “(1) intercession given by the holy spirit. (2) whatever you want to do for the Lord, the church must confirm and then commit you to the Lord.” Careen however stops the journey mid-stream and fails to list the third but refers to Acts 6:3-6¹⁰.

12. Without intent to make any findings at this stage, this court infers the following from the Bible readings: -

- a. That their choice neatly fit into the facts disclosed by some witnesses in this matter.
- b. That in her life, she could constantly seek guidance in the one-stop life manual that is the Bible.
- c. That their choice perfectly reflects the troubled circumstances of her life immediately before she went ahead of us.
- d. That unlike the stiff-necked and hearts-made-of-stone mortals that are referred to in the holy book (Acts 7:51)¹¹; Careen was continuously cognizant of her sins and readily repentant.
- e. That Careen was continuously dependent on God and thus keeping her hope burning that one day, the Lord will hear her petition.
- f. That Careen was determined to do the right thing.
- g. That Careen was looking forward to the second coming of her Saviour.

⁸ GNB Version reads: - “9You can be ruined by the talk of godless people, but the wisdom of the righteous can save you. 10A city is happy when honest people have good fortune, and there are joyful shouts when the wicked die. 11A city becomes great when the righteous give it their blessing; but a city is brought to ruin by the words of the wicked. 12It is foolish to speak scornfully of others. If you are sensible, you will keep quiet. 13No one who gossips can be trusted with a secret, but you can put confidence in someone who is trustworthy. 14A nation will fall if it has no guidance. Many advisers mean security. 15If you promise to pay a stranger’s debt, you will regret it. You are better off if you don’t get involved. 16A gracious woman is respected, but a woman without virtue is a disgrace. Lazy people will never have money, but aggressive people will get rich. 17You do yourself a favour when you are kind. If you are cruel, you only hurt yourself. 18Wicked people do not really gain anything, but if you do what is right, you are certain to be rewarded. 19Anyone who is determined to do right will live, but anyone who insists on doing wrong will die.”

⁹ GNB Version reads: - “12 Forgive us the wrongs we have done, as we forgive the wrongs that others have done to us.”

¹⁰ GNB Version reads: - “3So then, brothers and sisters, choose seven men among you who are known to be full of the Holy Spirit and wisdom, and we will put them ‘in charge of this matter. 4We ourselves, then, will give our full time to prayer and the work of preaching.” 5The whole group was pleased with the apostles’ proposal, so they chose Stephen, a man full of faith and the Holy Spirit, and Philip, Prochorus, Nicanor, Timon, Parmenas, and Nicolaus, a Gentile from Antioch who had earlier been converted to Judaism. 6The group presented them to the apostles, who prayed and placed their hands on them.”

¹¹ GNB Version.



13. By all standards, and understandably so, this matter evoked monstrous emotions especially amongst the immediate members of the family, relatives and friends. But this is the solace to all of us – evidence obtained from the said Bible readings - that Careen repented her sins and went to be with the Lord.
14. Now, in the context of these circumstances, what happened?

Part II: Background

15. This Public Inquest involves a public interrogation and examination of the circumstances surrounding and the cause of death of Careen Chepchumba Kili.
16. The lifeless body of Careen was found lying in bed at Apartment Number A17, within Santonia Court Apartments.
17. This Public Inquest was conducted between the 25th day of May 2016 and the 19th day of January 2018.
18. On the onset, this court must highlight that commencement of the hearing of this public inquest was temporized by the non-appearance of witnesses to the level of necessitating this court to exercise its compulsion powers.
19. The failure and the resultant retardation, which this court came to extricate in late 2015 and early 2016, was largely attributed to a blend of the following: -
 - a. absence of seamlessness in the handover of the investigation records from transferred officers;
 - b. lack of seamlessness in allocation of successors to the transferred officers;
 - c. The two above were compounded by the informal decision by the family to abandon pursuit of the matter on grounds that the direction taken would expedite healing, having been reeling from aftermath of her demise.
20. This decision of the family, however, having been taken without formally involving this court, was not in the records of the court therefore.
21. The father of Careen, Hosea Kili, narrated the events leading to their decision to abandon the matter. He explained that having been traumatized by the loss of their beloved first-ling daughter, in circumstances they could not immediately establish, they elected to forgive whomever they thought took her life and thus avoid re-traumatization. He maintained that they had left the issue of justice to God. He requested this court to terminate the proceedings.
22. The mother of the deceased, Cecilia Kili, associated herself to the views and decision expressed by her husband, Hosea Kili. She further added that the decision was taken when they realized that there was no evidence to immediately reveal the offender.
23. Having considered the concerns of the family, this court found them to be consequential, significant, critical and ponderous except that they could not rise to the level of being the sole determinant.
24. Upon an in-depth elucidation of the purpose of and the jurisprudence underpinning public inquests and upon explaining the public interest consideration to the parents, this court persuaded them to review their decision and participate in the inquest. The court issued appropriate directions consequently.
25. A total of thirty-two (32) witnesses, were publicly examined by the court. The said witnesses identified and produced eighty-four (84) real and documentary exhibits.



26. The State was represented by the learned Prosecution Counsel, Mrs. Christine Achieng.
27. The family of the deceased was represented, throughout the proceedings, by the learned counsel, Mrs. Rose Kariuki-Owesi.
28. The learned counsel, Ms. Florence Okumu, who was at the time holding brief for the learned counsel, Ms. Rigunya, represented Mr. Louis Armstrong Otieno (who the parents of Careen and Investigation Officers termed as the suspect), only on the 8th day of April 2016.
29. Finally, to appreciate the setting, this court had occasion to visit the scene (Santonia Court Apartments generally and specifically Apartment number A17) and made observations.

Part III: Summary Of Oral, Documentary And Real Evidence Presented

30. In his testimony, the 1st witness, Mr. Hosea Kili, told this court that he is the father of Careen (the deceased). He recalled that at the material time, his family was resident in Rosepark Apartments within Kilimani suburb, Nairobi. He recalled that the suspect herein, Louis Otieno (hereinafter referred to as Louis), moved into the Apartments and occupied an apartment directly below the one the family of Hosea was occupying. He recounted that in March 2011, his wife shared her suspicion that Careen Chepchumba (now deceased and hereafter referred to as Careen) had started a love dalliance with the new neighbour Louis. He related that he was perplexed because he knew that Louis was a married man, with children. He recalled that one day in March 2011, the deceased had not reached home by 11 pm and he got worried and called her. That she told him that she was still in the office, but after prodding further, they discovered that she was in Louis's house and that they spoke to Louis and expressed their displeasure. He recounted that despite multiple undertakings to abandon the affair, it continued. He recounted that he started losing money from the house. He recalled that at one point, he lost Kshs. 10,000 and after holding a family meeting, Careen confessed that she was the one who was taking money from her father without permission and that she was using the money for the upkeep of a jobless Louis, including rent, school fees for his children and other expenses.
31. The 1st witness recalled that in July 2011, his whole family was to attend a funeral of her wife's brother (an uncle to the Careen) but Careen promised to join them later but she didn't and that upon return, they were shocked to learn that the deceased had moved out of the family house. He recounted that he lost Kshs. 600,000, after she moved out. He recounted that he summoned her to the house and asked where she took the money and that she lied to him that she had given one Sandra at Santonia Apartments. He recalled that they went to the apartment but they could not find a person by that name but they found Kshs. 200,000 in an apartment and it is then that he discovered her new residence. He narrated that after a sustained prodding; she confessed that she gave the other part of the money to Louis on grounds that he needed it to seek medical services. He recalled that one day, a man called Elly Kimani came to the house and informed him that the Careen had taken money from him and another called Dr. Motende by a false pretence that the two will be her business partners in a maize business. That the amount was Kshs. 250,000 from Elly Kimani and Kshs. 1,000,000 from Dr. Motende. He recalled that around that time, he also received a complaint from one Paul Ng'ang'a, a friend to Careen, that she owed her Kshs. 50,000 and that she had failed to repay as agreed on grounds that she had a medical condition which was draining her financially. He recalled that he informed the said Paul that Careen had a medical cover and therefore it could not have been a reason for the borrowing. He recounted that no sooner had he absorbed the shock from Paul, than he received another complaint from Careen's cousin called Silas Bor that Careen had obtained by a false pretence Kshs. 800,000 from Silas's brother called Edward Bitok. He recalled that he went into shock and thus forced to advise Silas to arrange a meeting with Careen and Elly and he will join the meeting.



32. The 1st witness narrated that in the interim, Careen came to his office on 10th February 2012, in the evening and since he was busy, he informed his secretary to ask her to wait. That after waiting for a short while, she came to the doorstep, beeped into the office and told him that she was leaving and she walked in, placed an envelope on his desk and left. He recounted that he opened the letter dated 6th February 2012 and addressed to him. He narrated that in the letter, Careen expressed remorse for all the troubles she had caused him and that she had been manipulated by a “horrible man” called Louis, who had been extorting money from her and that she had decided to stop the love relationship. The letter was marked MFI 1. He recounted that contrary to her promise to come home that evening, she did not turn up.
33. Mr. Kili recalled that she invited Elly on 12th February 2012 to her house in Santonia Apartments. He recalled that he asked Elly to tag him along. He recounted that Careen was shocked to see him and Elly. He narrated that he decided that they hold a meeting at his family home at Rosepark Apartments and that together, they went. He recalled that he decided to call Silas, Edward and Paul to join them. He recalled that before the meeting, Careen requested him for a private meeting, which they held and she confirmed to him that she had borrowed Kshs. 800,000 from Edward to buy a printer and that she had used Kshs. 1,250,000 to pay a Mr. Cheloti of Stima SACCO from who she had borrowed Kshs. 700,000 and that Paul had lent her Kshs. 50,000 and that she owed many others. He recounted that they all turned up and started a meeting from 6 pm. He recounted that he sought to understand the reasons behind the multiple debts and that she explained that it was Louis who was extorting her for his medical bills, maintenance of his estranged wife and school fees for his children. He recalled that during the meeting, they deliberated all the claims and she said that she was unable to repay the loans, a total sum of approximately Kshs. 3,000,000. He recalled that she told him that she paid Kshs. 1,400,000 to Subru Motors, towards the purchase of a motor vehicle registration number KBQ 122J, a dark blue Range Rover and traded in her motor vehicle, a Volkswagen Golf, registration number KBN 967W, which was at the time of trading in valued at Kshs. 800,000. He recalled that Careen told him that she spent Kshs. 450,000 to pay a lady called Susan for a business partnership in a creative studio and that she had paid medical bills for Louis Otieno in Nairobi hospital and for rehabilitation of Louis in South Africa for a certain disorder. He maintained that after that, it was clear to him that the problem behind the multiple debts was Louis. He recounted that they agreed with Paul Ng'ang'a to make a complete list of all creditors and that he agreed to ask Dr. Motende to give him time to settle on behalf of Careen. He recalled that in the meeting, Careen agreed to instruct her employer, Kenya Power to deduct Kshs. 20,000 monthly towards settlement of Kshs. 250,000 owed to Elly and that she tearfully asked to return to their home and he agreed. He recalled that they agreed that any money spent on Louis be pursued through the assistance of the police. He recounted that Careen agreed to report the matter of extortion to the Officer Commanding Kilimani Police Division (herein after referred to as the OCPD Kilimani). He recalled that during the meeting, the phone of Careen was continually ringing and when her mother arrived, she took the phone away and discovered that it was Louis who was incessantly calling. He recounted that Careen then indicated that she needed a restraint order against Louis. He recalled that the meeting ended at around 8.30 pm and that Careen prepared a meal for the family. He recalled that after the meals, he unsuccessfully attempted to convince Careen to stay with them.
34. Mr. Kili narrated that Careen's brother, escorted her to Santonia Apartments using a car. He tearfully recalled that it was the last time he saw his daughter alive. He recalled that the following day was a Monday and that he had a meeting with a Mr. Kiarie of KCB, Mortgages Division, at Lonrho House and that his phone was a silent mode and that after the meeting, he found multiple missed calls from his son, Emmanuel, and his wife, Cecilia. That his wife was making a follow-up about the Careen's loans and that she has unsuccessfully tried to reach Careen. He recalled that on a Tuesday, he directed his wife to go to Careen's Apartment. He recalled that he received a call from Emmanuel to the effect



that Careen was no more. He recounted that he went to Santonia and found his wife wailing frenziedly and in company of Emmanuel. He recalled that he found the lifeless Careen lying on her left hand side, with vomit on the floor and cotton on her nostrils and her body well tucked. He recalled that he directed his driver to go and call the police. He recalled that when the police arrived, they did their part and he allowed them to move the body to Lee Funeral Home. He recalled that he suspected foul play and therefore hired a pathologist to work with the Government Pathologist. He recalled that the autopsy was conducted on 16.02.2012 by Doctor Johansen Oduor and a pathologist hired by the family, Dr. Moses Njue. He recalled that he thereafter received a phone call from the District Criminal Investigations Officer in charge of Kilimani Police Division (herein referred to as the DCIO Kilimani) to the end that the cause of death of Careen was strangulation. He recalled that police took two cellphones, one laptop, clothes which were worn by Careen, dustbin contents, and handwritten notes which appeared to be in Careen's handwriting, some of which had been torn and thrown in the dustbin.

35. In her testimony, the 2nd witness, Cecilia Chepkorir Kili, informed this court that she is the mother of Careen (the deceased). She recalled that at the material time, his family was resident in Rosepark Apartments within Kilimani suburb, Nairobi. She recalled that the suspect herein, Louis Otieno (hereinafter referred to as Louis), moved into the Apartments and occupied an apartment directly below the one the family of Hosea was occupying and started a romantic relationship with her daughter despite her protests. She recalled that money started to disappear from the house and they later discovered that she was the offender. She recounted that they also discovered later that she had borrowed a substantial amount of money from Edward Kiptoo, Elly Kimani, Ng'ang'a, Aggrey Keter and others and spent on Louis.
36. Mrs. Kili recalled that when she lost her brother, Careen's uncle, Careen failed to travel for the funeral and that upon return, they found out that she had moved out of the family house and that when she inquired, Careen told her that she wanted to be independent. She recalled that Careen refused to disclose her new residence until they were forced to investigate and discovered independently that she was residing in Santonia Apartments.
37. Mrs. Kili recalled that one Sunday, 12.02.2012, her husband (the 1st witness herein) went to Santonia Apartments and picked Careen. She recalled that she (2nd witness) later came back home and found them in a meeting and joined. That after dinner, her son, Emmanuel escorted Careen to Santonia using Cecilia's car.
38. The 2nd witness recounted that Careen was to come back home as agreed, on the following day (Monday) after work. She recalled that she tried to reach Careen several times but she did not picker calls and that later, her calls could not go through. She recounted that on the following day (Tuesday), she called her workplace and was told that she had not reported to work and thus she and Emmanuel went to the Santonia Apartments at around 11 am to find out why Careen was not picking her calls. She recalled that while Emmanuel went into the house, she remained outside in the parking. She recalled that Emmanuel came back and reported that he found the doors not locked and that Careen was in bed. She recounted that she went into the apartment and knocked the bedroom door incessantly but there was no response and thus was forced to open the door. She recalled that she went to the bed and shook Careen but Careen did not respond. She recalled that the beddings were well tucked, seemingly, someone else had tucked the beddings neatly. She recalled that she started screaming and Emmanuel rushed into the bedroom. She recalled that she saw cotton in Careen's nostrils and that the, laptop was playing music and that there were two glasses containing water. She recalled that on several occasions, she confronted Louis and Careen but Careen could say that she loved Louis as much as she loved her



family. She testified that she was not aware whether Careen had any sickness. She recalled that she found the main and bedroom doors not locked.

39. In his testimony, the 3rd witness, Louis Armstrong Otieno recalled that he met Careen while residing in Rosepark Apartments and that she introduced herself to him one evening when nobody was available to open the door for her. He narrated that in the said evening, she found him luxuriating in his balcony and requested to shelter in his apartment until such time when the door was opened and he obliged. He recalled that they engaged in banter and got to know each other more and that they became friends from that date. He recalled that Careen could pass through his apartment every often. He narrated that one evening, she came to his apartment and told him that she was a victim of abuse from her close relatives including the man he thought was her father but later came to learn that he was not her biological father.
40. The 3rd witness narrated that Careen told him that her parents had warned her against stepping foot in his apartment. He narrated that Careen told him that she was being sexually abused by the gentleman he thought he was her father and that her mother knew it but she had asked her to stay reticent. He narrated that Careen used to suffer both physical and psychological violence from her parents and that at one point, she sought refuge in his apartment at midnight and that on that night, her father wanted to kill her. He narrated that he later they discussed with Careen options of moving out. He narrated that after she moved out, he did not know her new residence until a month later. He recalled that he could visit her sometimes in her apartment.
41. Louis narrated that he was in Magadi, working, when he received a call from the Officer Commanding Kilimani Police Division (herein after referred to as the OCPD) who informed him that he was required to record a statement following the death of Careen. He narrated that he went to the station and recorded a statement. He narrated that thereafter, he was summoned again by the DCIO Kilimani and asked to allow medical personnel to take samples for Deoxyribonucleic Acid (herein after referred to as DNA) analysis and he complied. He narrated that one day, he was called by the police and he met the DCIO and OCPD sitting together and they informed him that the DNA results were out and that they did not implicate him to the death of Careen and that the phone tracking had indicated that he was in town and thus not implicated to the death. He narrated that the security at Santonia also exonerated him because they confirmed that he had not been there for over one week.
42. Louis denied that there was a romantic relationship between him and Careen. He denied that Careen gave him any money or paid any bills on his behalf, including medical bills. He narrated that Careen had told him that she was diabetic and that she had kidney complications. He narrated that he owned a Range Rover KBQ 122J. He testified that he bought the Range Rover by trading-in his Toyota Landcruiser registration plate number KAR 366S (as part of the payment) and that the deficit was to be paid in installments. He testified that he could not recall the exact price of the Range Rover. He testified that he used to earn his money from offering media consultancy services. He testified that he had two cellphones, with two Subscriber Identity Modules (SIM) cards as follows: 0733 535 744 and 0722 512 540. He testified that he is married and blessed with two children: a boy and girl and that at the material time, they pupils at Makini and Msingi Bora Schools respectively. He testified that he was the one who was paying the school fees. He argued that it could not have been true since he owned a Mercedes S320, a Mercedes E200, a BMW S25 and a Toyota Landcruiser. He testified that he owned a Volkswagen Golf, registration number KAH 737M, when he started working at Nation Media Group in 2,000. He testified that he had some pancreatic complication in 2012 and had travelled to South Africa for medical attention. He testified that he was at Careen's apartment a week before her demise. He testified that one day, Careen asked him to assist her to buy a car and that he did assist and she



bought a car, and she paid Kshs. 1,000,000, in cash. He told this court that Careen was a victim of violence, including sexual violence.

43. In his testimony, the 4th witness, Emmanuel Kiptoo Kili, a student at Daystar University, Nairobi Campus, told this court that he is a younger brother to Careen. He recalled that Careen was not only a sister but also a confidante and that she could often share a lot with him but this changed in 2012, and she became withdrawn, closed and she later moved out of the family house.
44. Emmanuel recounted that on 12.02.2012, a Sunday, there was a meeting in their family home but he was not present. He recalled that he came to the house later and he was requested to escort Careen to her house in Santonia Apartments, using his mother's car, a Toyota Camry, KBN 676N. He recalled that he did escort her to her house and wished her a good night and drove back to Rosepark Apartments. He recounted that it was the last time he saw her alive. He recalled that on the following day, Monday, as usual, he went to school and returned home in the evening.
45. The 4th witness recalled that on following day, Tuesday, while making breakfast, his mother inquired whether he had spoken with Careen since the previous Sunday and he answered in the negative. He recounted that after breakfast, his mother requested him to accompany her to Careen's house because she was not picking her calls. He recalled that they left at around 9.30 am, in her mother's car, for Careen's house and got there at around 10 am. He was the driver. He recalled that he parked the car next to and facing the staircase of Santonia Apartments. He recalled that his mother requested him to go to Careen's house and check whether she was in, as she waited in the car.
46. Emmanuel recalled that when he got to the door, he rang the bell once and having received no response, he knocked the door. He recalled that again, there was no response and he therefore tried to turn the door handle and he found out that the door was closed, but not locked. He recalled that he got into the living room and started calling her name three times, but there was no response. He recalled that from where he was standing, he could see the bedroom door, since the house was a one-bedroom apartment. He recalled that he walked towards the bedroom and on the way, glanced into kitchen and saw two glasses, which appeared to have been used with remnants of water. He recalled that he approached the bedroom door, which was ajar and beeped inside and saw a figure tucked in beddings, in bed and he assumed that Careen was asleep. He recalled that he could hear music playing from a laptop inside the bedroom. He recalled that he called out her name again but there was no response and thus assumed that she was in deep slumber. He recalled that he closed the main door as he left to inform her mother that Careen was in but asleep.
47. Emmanuel recounted that her mother asked him to lock the car as they both went up the stairs to Careen's apartment. He recalled that they went in and his mother placed her handbag on the nearest sofa and asked him to open windows because the house was stuffy. He recalled that he went to open windows as her mother went into bedroom. He recalled that after opening the windows, he stood at the balcony door, facing outside. He recalled that he heard his mother scream from the bedroom and immediately rushed there. He recalled that he saw Careen lying on side and a liquid flowing from her side of the mouth and it appeared dry. He recalled that her nostrils were stuffed with cotton wool. He further recalled that the cotton wool was soaked in blood. He recalled that he forced his mother to get out of bedroom to the living room, as she continued to wail. He recalled that he forced her mother to sit down at the balcony, took away her phone and used it to call his father.
48. The 4th witness narrated that his father did not pick the calls. He recalled that his father returned the call and he picked the call and asked him to come to Careen's apartment immediately. He recalled that his father came immediately and they once again went into the bedroom all together, came out, and closed the bedroom door. He recalled that people gathered around the apartment. He recalled that



- police arrived and started investigations. He recalled that later, police took the body away. He recalled that she lived at the topmost floor but could not recall the apartment number. He recalled that on 13.02.2012, at around 4 pm, he sent Careen a text message but she did not respond. He recalled that one day; Careen revealed to him that Louis was her lover. He recalled that Careen was not suffering and if she was, she did not inform him.
49. In his testimony, the 5th witness, Paul Ng'ang'a Ngugi, told this court that he is a businessperson. He recalled that he met Careen in 2006 through her father and that she undertook internship in a company associated to him. He recalled that sometimes in 2011, she called him on phone and asked to meet him, which request he obliged. He recounted that she went to his office, located in Uganda House. He recounted that she started a conversation with a rather perplexing tone posing "what have you heard about me?" to which he replied "nothing". He recounted that she narrated to him that she got involved with a gentleman called Louis Otieno but her father and mother were opposed to the relationship. He recounted that he asked her why she had decided to sacrifice her relationship with parents at the cost of the said gentleman.
50. Paul recounted that in June 2011, she called him on phone and asked whether there was a vacant house in the residence he was living (Wood Avenue Apartments) to which he answered her that he could not know. He recounted that she informed him that she was intending to move out from her parents' house so that she can continue with her relationship with Louis Otieno. He recounted that he discouraged her against making such a move. He recalled that in October 2011, she called him on phone and asked to meet him to which he complied. He recounted that she came to his office and informed him that she had developed dependency on prescription drugs and she wanted to undergo rehabilitation and for that reason, requested for a loan of Kshs. 200,000. He recounted that she did not disclose the nature of prescription drugs.
51. The 5th witness recounted that having been to South Africa around that time, he was aware that the air ticket was around Kshs. 40,000 and thus he decided to lend her Kshs. 50,000. He recounted that he got concerned about the borrowing and since her father was his friend, he informed him about the incident. He recounted that her father warned him against lending to her again since she was financing the lifestyle of Louis Otieno. He recounted that sometimes in 2012, she sent him a text reading "Hi. I am sorry. I need your help. Don't know where else to turn." He recalled that he gave her a call and asked her to see him, to which she agreed. He recalled that almost immediately after the call, she sent him a text requesting for a loan of Kshs. 500,000. He recalled that he asked her to see him in the office and she came at around 5.30 pm, but she looked downcast. He recounted that he encouraged her to share whatever was bedeviling her freely and she opened up and told him that she was heavily indebted to so many. He recounted that she informed him that the relationship with Louis had turned out to be financially draining including his medical bills, school fees, and a car. He recounted that he posed a question as to why she could not end the relationship to which she replied that she had tried in vain, since Louis was bipolar. He recounted that she informed him that Louis could sometimes force his way to her house in Santonia Apartments.
52. Paul recalled that after she left, he called her father, who was then in Arusha and narrated the story. He recalled that upon return from Arusha, her father called him on a Sunday to go to the house for a meeting. He recounted that although he felt rather awkward, he complied and went and he met her father in the house, two of her cousins-Bor and Bitok, and that they were later joined with Elly Kimani. He recounted that they discussed the debts. He recounted that during the meeting, she asked whether it was possible to get a restraint order against Louis. A plan was agreed on how to get her out of the debts. As part of the solution, he was tasked to look for one Susan to buy her shares and it was resolved that she moves back to her parents' house. As part of the settlement of the debts, she was to pay Elly in



monthly installments using her salary and that she could sell the households in her house and settle one creditor. He recounted that the meeting ended at around 9 pm and he left, leaving her cousins, mother, Elly Kimani and sisters Sharon and Valerie and her brother Emmanuel in the house. He recalled that he since he was tasked to look for Susan, he realized the following day that he did not have her phone contact and thus called Careen on her Safaricom line. He recounted that his call went unanswered. He redialed her number repeatedly but all went unanswered. He recalled that he was forced to text her father and asked him to request her to call him back. He recalled that he did not get to hear from any of them until he received sad news on the following day, a Tuesday, through a text from her father. It read, "Where are you? Come with police". He recalled that since the text was vague, he called him and he informed him that Careen was no more. He recalled that he went to Santonia Apartments immediately as his accountant called the police.

53. In his testimony, the 6th witness, Edward Kiplimo Bitok, told this court that he is a banker. He told this court that Careen is his niece, since her father, Kili, is his cousin. He told this court that he knew Careen from her childhood. He recalled that on 26.10.2011, Careen came to his office, located in Kencom House, and requested for financial assistance. He recounted that he asked her to explain why she needed assistance and that she informed him that she was intending to buy a larger printing machine as she was in the business of printing stationery including diaries, calendars and cards. He recounted that she went ahead to prove that she was in a position to repay by showing him a post-dated cheque of KShs. 900,000, which allegedly was a payment from one of the many of her clients and thus explained that once it matures, she will be in a position to repay him. He recalled that having been sufficiently convinced, he promised to link her to a moneylender he knew and he lent her KShs. 800,000, and demanded that he stands surety for her.
54. Edward recounted that 4 days after, she sent him a text message saying that the cheque had bounced. He recalled that he called her on 21.11.2011 but she told him that she was in Lanet. He recalled that on 22.11.2011, she sent him a text saying that her colleague, Peter Mutuku, had deposited the money into his bank account on her behalf. He recalled that he checked the bank account balance but the deposit was not reflected and thus informed her immediately. He recalled that on 23.11.2011, she sent him a text message saying that she was unable to trace the Peter Mutuku and she was therefore worried. He recalled that on that day, she informed him that she had KShs. 600,000 and could get KShs. 280,000 later. On the same day, she sent a text message and informed him that she was admitted in Nairobi Hospital suffering from Asthma. He recounted that on 24.11.2011, when he called her to inquire about her recuperation progress; she told him that she was undergoing dialysis. He recalled that since he could not reconcile dialysis and asthma, he sent a text message expressing his confusion. He recalled that on 25.11.2011, she informed him that of the KShs. 600,000, she had spent KShs. 200,000 on medical bills. He recalled that he asked her to bank the balance but after that conversation, he could not reach her. He recalled that on 26.11.2011, she informed him that she was in Mombasa, that she was not comfortable repaying the money in bits, and thus, he had to wait until she gets the full amount. He recalled that she thereafter went mute for two weeks. He recalled that after that, she informed him that her co-signatory was not in town and thus could not transact. He recalled that on 23.12.2011, he informed her about the mounting interest and that she promised to pay.
55. Edward recalled that on that day, he met his brother Silas Bor who narrated to him how Careen had requested him to secure 500 bags of maize for her to buy and he warned his brother against going ahead with the transaction, giving him information about the incident. He recalled that in January 2012, Silas informed him that Careen had requested him financial assistance in the sum of KShs. 1,200,000. He recounted that at this point, he concluded that something was amiss with Careen and asked Bor to inform her parents. He recalled that on 12.02.2012, his brother, Bor, called him and informed him that Hosea Kili, the father to Careen, had called for a meeting in his family house regarding the multiple



debts. He recalled that he attended the meeting and met Paul Ng'ang'a, Elly Kimani, Hosea Kili, Silas Bor and Careen. He recalled that Careen's mother was not in the meeting but later joined them. He recalled that after deliberating about the debts, they found them to be over Kshs. 3,000,000, which she said that she spent on Louis Otieno for his rent, school fees for his children, his medical bills and a Range Rover car, after trading-in her Volkswagen Golf. He recalled that they agreed on the way forward including Careen returning to her family house and selling the household items in her new house to settle Elly Kimani and sell her shares in a certain business for the same reason. He recalled that Careen complained that she had been extorted money by Louis Otieno and that she intended to report him to the police and in addition secure a restraint order against him. He recalled that they left the meeting and did not hear from anyone until Tuesday, 14.02.2012 when at around 11 am, when he got to learn that Careen was found dead in her apartment. He recalled that his debt was paid after the funeral as part of the funeral expenses.

56. In his testimony, the 7th witness, Aggrey Kipkoech Keter, told this court that he is a businessperson and that Careen a family friend. He recalled that around October or November 2011, he received a call from Careen who inquired whether his brother Kenneth Keter had told her anything to which he replied in the negative. He narrated that immediately thereafter, he called his brother and sought to know what Careen had told him and that he informed that Careen wanted to borrow money from him. He recalled that he called Careen and that she informed him that she was running a printing business and that she wanted to borrow Kshs. 80,000 to inject into the business. He recalled that he told her that he did not have the cash and that he promised that get back to her once he gets the money. He recalled that once he got the money, on a Monday morning in February 2012, with intention to meet her over the following weekend to hand over the money, he gave her a call and she promised to pass by his office to collect the money. He recalled that she did not pass by as promised. He recalled that on the following day, his wife informed him that Careen had passed on.
57. In his testimony, the 8th witness, Linet Kavugwi Kadanya, told this court that she used to do menial jobs at Santonia Apartments and in particular A2 and A18 (which is opposite A17). She recalled that one day in February 2012, she was working in Apartment A2 when she saw people crying in the compound and upon inquiry, she was told that a certain lady who used to live in A17 was found dead. She told this court that A2 is located on the ground floor and A17 is located on the top floor. She recalled that while working in A18, she could occasionally see a man, he did not recognize, seated in the balcony of A17.
58. In his testimony, the 9th witness, John Njoroge Wainaina, told this court that he was a security guard employed by G4S but stationed at Santonia Apartments from 2011. He told this court that he knew Careen. He told this court that his duties involved among others opening and closing the gate for residents and visitors and confirming with residents when a visitor came calling and registering details of motor vehicles of visitors upon entry and exit. He recalled that the late was a resident of A17. He recalled that Louis Otieno used to frequent the said apartment number A17. He recalled that he last saw Careen on 12.02.2012, a Sunday. He recalled that Louis had come in company of Careen, in a black Range Rover, two weeks earlier at around 11 am and left at around 1 am. He told this court that he did not record the registration number of the said Range Rover because Careen had directed them not to bother when Louis was coming to her house.
59. John narrated that sometimes Louis could spend a night at her apartment. He recalled that on 12.02.2012, her brother at around 8-9 pm escorted Careen and that her brother left soon thereafter. He told this court that nobody paid her a visit on the night of 12.02.2012. He told this court that he could not confirm whether there was a visitor during the day of 12.02.2012. He told this court that



- during the day of 12.02.2012, he left a reliever by name Dismas. He told this court that on 14.02.2012, he reported to duty at 6 pm and he was informed that Careen was found dead.
60. In his testimony, the 10th witness, John Malogo Nderitu, told this court that he is a businessperson, running a business styled Subru Motors, off James Gichuru Road, Nairobi. He told this court that he is one of the Directors and his sister Joyce Mugure Nderitu is the other Director. He told this court that he knows Louis, who has been a longtime client and friend. He told this court that on 02.08.2011, Louis came to his yard alone and did purchase a motor vehicle, a Volkswagen Golf registration number KBN 967W at Kshs. 1,000,000, for which he paid in cash.
61. Nderitu told this court that Louis informed him that he was buying the car for his wife. He told this court that on the collection date, he came with a lady, Careen, and he introduced her as his wife. He told this court that in the receipt, Louis was indicated as the purchaser. He told this court that later, Louis came back and expressed interest in a dark-blue Range Rover worthy Kshs. 5,900,000 and that accepted a Toyota VX Landcruiser as a trade-in car for the said Range Rover. He told this court that they valued the Landcruiser at Kshs. 2,400,000 and that Louis brought Kshs. 600,000 in cash after 2-3 weeks. He told the court that Louis was unable to pay the balance of Kshs. 3,500,000. He told this court that later, Louis brought the VW Golf as part of the payment and that they valued it at Kshs. 1,000,000. He told this court that Careen later came with Kshs. 800,000 and requested to take the VW and he allowed her to take it back. He told the court that this time round, they issued her with a receipt number 2005 dated 17.11.2011 in the name she chose "Careen Kili Armstrong". He identified the receipt in this regard and it was marked MFI 2. He identified the Toyota VX Delivery Note to Subru Motors dated 29.07.2011 and it was marked MFI 3.
62. In his testimony, the 11th witness, Sarah Wairimu Ngamau, told this court that she resides in Santonia Apartments, apartment A18, which is located directly opposite apartment A17 on the same floor. She narrated that Careen was her neighbor for a few months. She indicated that they could occasionally meet in the corridor and have brief chat. She told this court that she could sometimes spot her with Louis and that she could spot Louis in the balcony. She recalled that on 14.02.2012 she was at work when she received a call from Linet (the 8th witness herein above) who informed her that Careen had been found dead. She told this court that she went to house and found people milling around the house and confirmed the information. She also told this court that she saw notes written by Careen. She told this court that she saw Careen a week earlier.
63. In his testimony, the 12th witness, Charles Gago, told this court that he is a security guard employed by G4S and that he was stationed at Santonia Apartments from 2008 to the date of this testimony. He told this court that he knew Careen and that her apartment used to be frequented by Louis. He told this court that Careen had asked them to allow Louis unrestrained ingress to her apartment. He told this court that Louis was using a Range Rover KBQ 122J and that Careen had a VW Golf. He told this court that he would be off-duty on Mondays and that Dismas Onchonga could relieve him. He told this court that the night guard was John Njoroge. He told the court that following the direction from Careen, sometimes they could register the entry of Louis and sometimes they could not. He recalled that on 09.02.2012, Careen did receive a visitor who registered his name as 'Large'. That he came in a car registration number KBF but he could not recall the other numbers. He told the court that he did not register it because Careen told him not to bother. He recalled that on 13.02.2012, he was not on duty. He resumed on 14.02.2012 at 6.30 am. He told the court that on 14.02.2012, he took over from the night guard, John Njoroge. He told the court that later at around 9 am, he heard a person screaming and he rushed there. He learnt that Careen was found dead. He told the court that he saw the body with cotton in her nostrils.



64. In his testimony, the 13th witness, Dismas Onchaga Oriero, told this court that he is a security guard employed by G4S and that he was a reliever at Santonia Apartments on Mondays and that on 13.02.2012 he was on duty at the said apartment. He told this court that he relieved Charles Gago. He told this court that he took over from Dickson who was on night shift. He told this court that he did not witness any unusual incident on that day. He told this court that he did not see Careen on 13.02.2012. He told this court that he knew Careen and that he last saw her on the previous Monday while she was heading to work. Apartment used to be frequented by Louis. He told this court that Careen had asked them to allow Louis unrestrained ingress to her apartment. He told this court that Louis was using a Range Rover KBQ 122J and that Careen had a VW Golf.
65. Dismas told this court that he would be off-duty on Mondays and that Dismas Onchonga could relieve him. He told this court that the night guard was John Njoroge. He told the court that following the direction from Careen, sometimes they could register the entry of Louis and sometimes they could not. He recalled that on 09.02.2012, Careen did receive a visitor who registered his name as 'Large'. That he came in a car registration number KBF but he could not recall the other numbers. He told the court that he did not register it because Careen told him not to bother. He recalled that on 13.02.2012, he was not on duty. He resumed on 14.02.2012 at 6.30 am. He told the court that on 14.02.2012, he took over from the night guard, John Njoroge. He told the court that later at around 9 am, he heard a person screaming and he rushed there. He learnt that Careen was found dead. He told the court that he saw the body with cotton in her nostrils.
66. In his testimony, the 14th witness, Eric Oira Mirera, told this court that he is an employee of Kenya Power from 2007, serving in the Department of Information and Communication Technology as a Technician. He told this court that from 2009, when Careen joined the Company, he became his colleague in the same Department. He recalled that on 10.02.2012, he worked with Careen until midnight. He recalled that Careen was thereafter, they were both transported home by the company vehicle, which was driven by Wesley Kirui, and that Careen was dropped home first at Kirichwa Road and that he was dropped last at Ongata Rongai. He recalled that on 11.02.2012, they did not report to work. He recalled that at around 10 pm, Careen send him a text wishing him a happy birthday. He recalled that on 13.02.2012, a Monday, he reported to work at around 7.05 am. He recalled that Careen got in touch with him on phone and informed him that she will report to work at around 11 am and thus late. He recalled that her low tone sounded like a person who was in bed. He recalled that when she did not arrive by 1 pm, he decided to call her but her phone went unanswered.
67. Eric told this court that he tried to reach her on phone on 14.02.2012 at around 8 am but again the call went unpicked. He told this court that he called her airtel line. He told this court that he followed up with a text to inquire where she was but the text too was not answered. He told this court that later, he tried to reach her on her safaricom line but it was not going through. He recalled that later, a colleague, Nick Manduku informed him that a lady had called the office inquiring whether there was an employee called Careen and that he heard people screaming from the background. He recalled that they (him, Samuel Ndirangu, Nick Manduku and Kalei) rushed to her residence in a company vehicle. He told this court that they learnt that she had passed on.
68. In his testimony, the 15th witness, Police Constable John Biko, told this court that he is attached to the City Mortuary. He recalled that he witnessed the post-mortem of Careen on 16.02.2012 at the City Mortuary. He told this court he filled the Post-mortem Form. He told this court that he was with Paul Ng'ang'a, Hosea Kili and John Cheruiyot, who identified the body to Dr. Johansen Oduor and Dr. Moses Njue. He recalled that the following samples were removed:
- a. Contents of the stomach; and



- b. One kidney; and
 - c. A piece of the liver; and
 - d. Blood; and
 - e. Vaginal swab.
69. The 15th witness told this court that this court that the samples were forwarded to the Government Chemist for analysis. He identified the Post-mortem Report dated 16.02.2012 and it was marked MFI 4.
70. In his testimony, the 16th witness, Dr. Charles Muthui Kariuki, told this court that he is heart specialist (a cardiologist) since 2001 and that he underwent a Bachelor of Science in Medicine in the University of Nairobi and graduated in 1989. He told this court that he further studied internal medicine in the United Kingdom and graduated in 1998. He further told this court that he trained as a cardiologist in the United Kingdom.
71. Dr. Kariuki recalled that he knew Careen on the 07.10.2011 when she came to his clinic in Nairobi Hospital complaining that her heart was beating faster than usual. He told this court that after examination, he found the heart okay and he therefore sent her for blood tests. He told this court that she came back for results on 13.10.2011. He told this court that he found out that the thyroid was hyperactive. He told this court that the thyroid produces a hormone called thyroxin and that it was over-producing the hormone. He told this court that he prescribed medicine and advised her to return after one month for review. He told this court that Careen did not return to the clinic. He identified a Report dated 27.02.2012 and it was marked MFI 5. He told this court that she had a medical cover issued Jubilee Insurance but the balance was not sufficient. He told this court that her father came to clear the balance after her death. He told this court that the hyperthyroidism was not life-threatening.
72. In his testimony, the 17th witness, Assistant Superintendent of Police Michira Ndege, told this court that he is forensic document examiner based at the Directorate of Criminal Investigations (DCI) Headquarters. He told this court that he trained as a document forensic examiner at the DCI Laboratory; at the National Ribat University in Khartoum, Sudan; and at the Australian Federal Police Forensic Centre. He told this court that on a day-to-day basis, he examines disputed documents, over which he has garnered 9 years. He recalled that on the 01.03.2012, Force Number 81359 Sergeant Kimani of DCI Kilimani presented the following documents for purposes of examination:
- a. Exhibit marked 1: the document in question (torn handwritten note) and it was marked MFI 6.
 - b. Exhibit marked 2: handwritten notes on a letterhead of National Social Security Fund (NSSF) and it was marked MFI 7.
 - c. Exhibit marked 3: handwritten notes and it was marked MFI 8.
 - d. Exhibit marked 4: a letter purported to have been written by Careen dated 05.02.2012 and it was marked MFI 1.
 - e. Exhibit A1: a loan application form from Hendrix Autoparts and it was marked MFI 9.
 - f. Exhibit A2: a cooperative bank cheque requisition form dated 30.01.2012 and it was marked MFI 10.
 - g. Exhibit A3: a handwritten note dated 12.04.2010 and it was marked MFI 11.
 - h. Exhibit A4: a handwritten note dated 14.05.2010 and it was marked MFI 12.



- i. Exhibit Memo Form marked MFI 13.
73. The 17th witness told this court that the Investigating officer wanted to establish whether:
- a. the handwritings on MFI 6, 7, 8 and 1 were made by one and the same person as those appearing on MFI 9, 10, 11 and 12; and
 - b. The signature circled with a red ink was made by the same person as the one appearing on MFI 9, 10, 11 and 12.
74. The 17th witness recalled that on 16.03.2012, he carried out the examination by comparing the handwritings on MFI 6, 7, 8 on one hand with the handwritings on MFI 9, 10, 11 and 12, and formed an opinion that there were similarities in the handwritings and thus were made by the same author.
75. Superintendent Ndege also told this court that upon comparing the signatures pointed by a red ink on MFI 6 with then signatures pointed by a red arrow on MFI 9 and 10, he formed the opinion that they were made but the same author.
76. The 17th witness testified that he subject the handwritings and signatures to image enhancement and magnification procedures by using a video-spectra comparator and a magnifying lens, to enable him get a better visibility to identify the individual characteristics. He told this court that before arriving at his opinion, he considered the following:
- a. the character identification and terminal strokes; and
 - b. the character construction and arrangements; and
 - c. pen pressure; and
 - d. the natural pen lift; and
 - e. the baseline design; and
 - f. the movement of the pen from the start to the end in the said signatures; and
 - g. ink distribution and character writing quality and
 - h. The general resemblance.
77. Superintendent Ndege told this court that after the examination, he prepared a Report dated 16.03.2012 addressed to DCI Kilimani. He identified the Report and it was marked MFI 14. He produced the Report as Exhibit 14.
78. In his testimony, the 18th witness, Chief Inspector of Police (CIP) Silvester Lagat (now the Officer Commanding Busia Weigh-Bridge Station) told this court that he was at the material time attached to Kilimani Police Station and that he was the officer who opened investigations into this incident. He recalled that on 14.02.2012, he was the duty officer when an officer manning the Report Desk informed him that someone had reported that a person had been found dead in her house. He told this court that he requested the officers who document scenes of crime and together with Police Constable (Woman) Kioko, they went to the scene at Santonia Apartments, House number A17.
79. The 18th witness told this court that at the scene, they met Kipkemboi, a brother to the deceased. He told this court that they entered the bedroom and found the deceased lying in bed, the beddings tucked neatly. He told this court that he saw blood stains on the bed. He also told this court that he did not see any physical injuries. He narrated that the officer who documents scenes of crime, Police Constable Simba, took photos. He also narrated that they found documents in the house as outlined below:



- a. One undated note addressed by the deceased to the Officer Commanding Kilimani Police Division (the OCPD). The note was marked MFI 15.
- b. a light green handwritten note on which various names and amounts were written as follows: Samuel Thuku-100k; Cherotich-100k; Careen-20k; Daniel-15k; Anold-240k; Salon-7,600; Danson-5k; Total-987,000. This note was marked MFI 16.
- c. Another light green handwritten note with words “I am open to all good. I am receptive to all good.” This note was marked MFI 17.
- d. Another pink handwritten note-bearing Bible verses: 2nd peter 3:8-10; Habakkuk 8:1-3; Habakkuk 13:4. This note was marked MFI 18.
- e. Another pink handwritten note written “year of grace....” This note was marked MFI 19.
- f. Another pink handwritten note dated 03.01.2012 written: 3rd John “I promise to tell you the truth stuff at the right time. This note was marked MFI 20.
- g. Another pink handwritten note written “I promise once again that when we are done, usually dealing with your issues, we will start dealing with issues of mine.” This note was marked MFI 21.
- h. Another pink handwritten note written “Joyce-10k; Raymond-10k. This note was marked MFI 22.
- i. Another light green handwritten note written “I am at peace. I have accepted myself. “This note was marked MFI 23.
- j. Another pink handwritten written “Mary and David...1380-000211.” This note was marked MFI 24.
- k. Pay-in-slip from NIC bank in the name of Louis Armstrong Otieno for Kshs. 60,000, Serial Number 1547142. This slip was marked MFI 25.
- l. Another pink handwritten written, “prayer is way.” This note was marked MFI 26.
- m. Another pink handwritten written “when the Lord calls you.” This note was marked MFI 27.
- n. A voucher from Nairobi Hospital, Serial Number IDE 10476/11 in the name of Louis Armstrong dated 29.09.2011 at 0126 hours for Kshs. 65,470. This voucher was marked MFI 28.
- o. A voucher from Nairobi Hospital, Serial Number IDE 10477/11 in the name of Louis Armstrong dated 29.09.2011 at 0126 hours for Kshs. 30,000 and the cardholder is Careen Chepchumba. This voucher was marked MFI 29.
- p. Invoice in-patient final details from Nairobi Hospital, Invoice Number HFB 18433/11 in the name of O.L. Armstrong, with five pages, dated 29.09.2011. This invoice was marked MFI 30.
- q. A card written Careen C. Kili and a voucher number is ORE 26206/11 dated 04.10.11 from Nairobi Hospital. This card and voucher were marked MFI 31.
- r. A voucher from Nairobi Hospital, Serial Number IDE 10970/11 in the name of Otieno Louis Armstrong dated 11.10.2011 for Kshs. 13,869. This voucher was marked MFI 32.



- s. A voucher from Nairobi Hospital, Serial Number IDE 10970/11 in the name of Otieno Louis Armstrong dated 11.10.2011. This voucher was marked MFI 33.
 - t. An invoice from Nairobi Hospital, Invoice Number HFB 18433/11 in the name of Armstrong Louis Otieno, dated 11.10.2011. This invoice was marked MFI 34.
 - u. A voucher from Nairobi Hospital, Serial Number OBR 185569/11 in the name of Otieno Louis Armstrong dated 26.09.2011. This voucher was marked MFI 35.
 - v. A voucher from Nairobi Hospital, Serial Number OBR 104632/11 in the name of Otieno Louis Armstrong dated 03.06.2011. This voucher was marked MFI 36.
 - w. A voucher from Nairobi Hospital, Serial Number ODE 10385/11 in the name of Otieno Louis Armstrong dated 27.09.2011. This voucher was marked MFI 37. It was paid by Careen C. Kili. Attached is the admission Form Number 116258 dated 27.09.2011. This is marked MFI 37A. This is also accompanied by an interim bill, 3 pages. This Interim Bill is marked MFI 37B.
 - x. An admission note from Nairobi Hospital for Otieno Louis Armstrong dated 27.09.2011. This note is marked MFI 38.
 - y. A receipt number 5292 issued by the Dental Place Ltd for Otieno Louis Armstrong for Kshs. 250,000. This receipt was marked MFI 39.
 - z. A note from Nairobi Hospital for Otieno Louis Armstrong bearing prescription. This note is marked MFI 40.
 - aa. An invoice attached to the above prescription dated 24.10.2011, Invoice Number ORE 282585/11. This Invoice is marked MFI 41.
 - ab. A transaction receipt issued by Cooperative bank dated 16.12.2011 for withdrawing Kshs. 1,249,000 from the bank account held in the name Kili Careen Chepchumba. This receipt was marked MFI 42.
 - ac. A receipt number 11831 dated 22.09.2011 in the name of Louis Otieno. This receipt was marked MFI 43.
 - ad. A notification of discharge Serial Number 27277 issued to Louis Otieno. This notification was marked MFI 44.
 - ae. A receipt of payment issued by Nairobi Hospital to Kili Careen Chepchumba for paying Kshs. 130,000. This receipt was marked MFI 45.
80. CIP Lagat also told this court that they also recovered:
- a. Tablets from the table.
 - b. A laptop.
 - c. Two mobile phones.
 - d. Mobile phone chargers.
81. The 18th witness testified that he thereafter removed the body to Lee Funeral Home. He narrated that he thereafter handed the matter over to the DCI Kilimani.



82. CIP Lagat told this court that on instructions of the then District Investigations Officer (DCI), Mr. Meeme, he recorded a statement and handed all the documents and exhibits listed above to Senior Sergeant Maobe.
83. The 18th witness told this court that having recovered the said documents and exhibits, there was no need of locking the house. They left the house unlocked therefore.
84. In his testimony, the 19th witness, Corporal William Sayanga (now retired) was serving in the DCI Kilimani and was one of the Investigating Officers (together with Senior Sergeant Maobe, the DCI Superintendent Meeme, Sergeant Kimani and Inspector Lagat) told this court that he was roped in by the DCI Superintendent Meeme (now retired also) after 3 days. He told this court that together with Senior Sergeant Maobe and Sergeant Kimani, the visited the scene again, 3 days after CIP Lagat visited the scene. He told this court that he recovered further documents some bearing the name of Louis Armstrong Otieno. He told this court that he recovered the following documents:
- a. A document torn and thrown in the dustbin, and upon reconstruction of the pieces, he gathered that it was complaining about Louis Otieno (herein above marked as MFI 6). He told this court that the handwritings appearing in MFI 6 were established to be that of Careen by the Forensic Document Examiner. He told this court that in the documents, Careen complained that she used Kshs. 3, 500,000 to pay school fees for Louis's children, hospital bills and fare.
 - b. A document, dated 04.11.2011, addressed by Louis to the father of Careen, which reads, "We may be sworn enemies but put that nonsense aside for a moment. Careen may be gravely ill. She is potentially suffering multiple organ failure as diagnosed by a doctor in Nairobi Hospital. They have said that she has a very weak heart, one sick kidney and a sick thyroid. Louis Otieno." This was marked MFI 46.
 - c. An undated document addressed to the OCPD Kilimani complaining of extortion (MFI 15).
 - d. A car Sale Agreement between Subru Motors and Careen Kili Armstrong, for Kshs. 800,000 for VW Golf. Marked as MFI 2.
 - e. A payment schedule dated 02.03.2011. Marked as MFI 3.
 - f. A note dated 03.01.2012 purportedly written by one Paul Ng'ang'a (the 6th witness herein) to Careen. Marked MFI 20 and 21.
 - g. A note itemizing amounts of money borrowed. Marked MFI 16.
 - h. Other documents marked MFI 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43.
 - i. An x-ray from Nairobi Hospital for Careen Kili. Marked
 - j. An insurance manifest for Jubilee Insurance dated 13.10.2011. Marked MFI 50.
 - k. An undated document written, "I am a child..." Marked MFI 51.
 - l. A vehicle transfer form dated 19.10.2011 between Stephen Mwangi and Careen Chepchumba Kili for motor vehicle registration number KBN 967W with a copy of the ID of the said Mwangi and a copy of ID of Careen attached. Marked MFI 52.
 - m. A tenancy application form in the name of Careen Chepchumba Kili for an apartment in Santonia Court Apartments, for a period of three months at Kshs. 168,000 from 18.07.2011, with a receipt number 0064 attached. Marked MFI 53.



- n. A cash deposit slips of Kshs. 84,000 from Stima SACCO Ltd, by Careen, into account number 5020966120. Marked MFI 54.
 - o. Another cash deposit slip attached to MFI 54, dated 16.12.2011 for Kshs. 700,000, by Careen, into account number 5020694700, account held by David W. Cherote. Marked MFI 55.
 - p. A letter written by the deceased to her father. Marked MFI 1.
85. Corporal Sayanga told this court that he secured from Airtel to secure Careen's communication data. From the data, he gathered that she last communicated with somebody, for seven minutes, on 13.02.2012 at 10 am. He told this court that Airtel did not provide the phone details of the person Careen last communicated with but only provided the International Mobile Equipment Identity (IMEI) number. He told this court that he was therefore forced to write to Airtel on 02.03.2012 to provide details of the said IMEI number namely 8425403062102743571. This letter was marked MFI 47. He told this court that Airtel replied on 12.03.2012 and provided a print-out without the phone number. The letter is marked MFI 48. The printout is marked MFI 49.
 86. The 19th witness told this court that regarding the note written by Paul, he called him to shed light.
 87. Corporal Sayanga testified that he prepared a Search Inventory, which signed by Senior Sergeant Maobe, Hosea Kili and himself, dated 17.02.2012. Marked MFI 56.
 88. The 19th witness told this court that the laptop and mobile phones were not in court and that they may have been returned to the family.
 89. Corporal Sayanga told this court that during his investigations, Louis had a love affair with Careen and that the family of Careen did not approve this affair. He told this court that the family complained that Careen was using money irregularly obtained from her father to maintain Louis and that Careen, wrote a note to the OCPD Kilimani to that effect, although the note did not reach the OCPD. He told this court that the way the beddings were tucked raised questions. He told this court that Louis denied having a love affair with Careen. He told this court that he had several questions to ask the prime suspect but the task of questioning him was assigned to the Deputy DCIO.
 90. The 19th witness narrated that Louis told him that from 11.02.2012 to 14.02.2012, he was somewhere in Kajiado. He told this court that the phones of Loius were switched off during the period and thus making it impossible to locate where he was during that period.
 91. Corporal Sayanga told this court that blood samples were taken from Louis and submitted by Biko to the Government Chemist and that they were subjected to analysis. He identified the post-mortem Report. He identified the Report from the Government Chemist dated 19.09.2016. He identified a loan application form by Careen and pointed out that the beneficiary is Loius (MFI 9).
 92. The 19th witness testified that CIP Lagat had informed him that the scene had been dusted for fingerprints.
 93. Corporal Sayanga told this court that the bed should have been examined for Deoxyribonucleic Acid before the body was removed.
 94. The 19th witness produced MFI 1 through 56 as Exhibits 1 through 56 except MFI 5 and 6. He told this court that he was asked to assist Senior Sergeant Maobe and Sergeant Kimani and CIP Lagat because of his experience in investigating such matters.
 95. The 19th witness told this court that he did not receive the tablets from CIP Lagat.



96. Corporal Sayanga concluded by telling this court that upon considering all evidence, he formed the opinion that it was difficult for a person to commit suicide and stuff cotton in her nostrils.
97. In his testimony, the 20th witness, Anne Wangechi Nderitu, told this court that she holds a Master's Degree in Chemistry and that she works at the Government Chemist Department as an Analyst, a job she has performed for 15 years. She recalled that on 17.02.2012, at the laboratory of the Government Chemist, the following items were received from Force Number 6904 PC John Biko of Kilimani Police Station:
- a. Blood sample marked C, indicated as of Careen Chepchumba.
 - b. Vaginal swab in a plastic packaging marked D, indicated as of Careen Chepchumba.
98. The 20th witness further recalled that on 20.02.2012, the following items were brought to the laboratory of the Government Chemist by Sergeant Kimani of DCI Kilimani:
- a. A white flowered, blue, maroon and black and checked blue and light blue mattress cover in a khaki envelope marked B.
 - b. A white flowered bedsheet in a khaki envelope marked C indicated as of the deceased.
 - c. A brown top in a khaki envelope marked D, indicated as of deceased.
 - d. A grey trouser in a khaki envelope marked E, indicated as of the deceased.
 - e. A pillow with a brown cover in a khaki envelope marked F, indicated as of the deceased.
 - f. Nail clippings wrapped in a white paper inside a khaki envelope, marked G, indicated as of the suspect, Loius Otieno.
 - g. Blood sample in a vacuum marked H1 and H2, indicated as of the suspect.
99. Ms. Nderitu further recalled that on 27.02.2012, the following items were received at the laboratory of the Government Chemist from Sergeant Kimani of DCI Kilimani nail clippings wrapped in a white paper, marked J, indicated as of the deceased Careen Chepchumba.
100. The 20th witness told this court that the Government Chemist was required to determine the presence of and source of semen, spermatozoa and blood stains. She told this court that analysis was carried out and the following findings made:
- a. The mattress cover, bedsheet, nail clippings indicated as of Louis Otieno and pillow were moderately stained with human blood.
 - b. The trouser, top and nail clippings indicated as of Careen Chepchumba were lightly stained with human blood.
 - c. The vaginal swab was not stained with semen or spermatozoa.
 - d. The mattress cover and nail clippings indicated as of Careen Chepchumba did not generate DNA profile, even with several attempts of analysis.
 - e. The mattress cover, bedsheet, pillow, trouser and top did not have seminal stains.
 - f. The DNA profiles generated from the pillow, bedsheet, nail clippings indicated as of Careen, nail clippings indicated as of Louis Otieno, trouser, and blood sample marked C, indicated as of Careen and that marked H1 and H2, indicated as of Louis Otieno were tabulated.



101. Ms. Nderitu concluded that:
- a. The DNA profiles generated from the blood stains obtained from the pillow and trouser matched the DNA profile generated from the blood sample C indicated as of Careen with a probability of 1.05×10^{20} , which is the highest possible degree even in the largest population.
 - b. The DNA profiles generated from the blood stains obtained from the bedsheet matched the DNA profile generated from the blood sample C indicated as of Careen.
 - c. The DNA profiles generated from the nail clippings indicated as of the suspect Louis Otieno was from an unknown female. This was guided by chromosomes (xx for a female and xy for a male).
 - d. The nail clippings indicated as of Louis Otieno and the nail clippings indicated as of Careen generated the same endogenous DNA profiles that matched the DNA profiles generated from the blood sample indicated as of Careen with a probability of 1.05×10^{20} , which is the highest possible degree even in the largest population.
102. The 20th witness identified:
- a. The Exhibit Memo Form dated 17.02.2012 and it was marked MFI 57.
 - b. The Exhibit Memo Form dated 20.02.2012 and it was marked MFI 58.
 - c. The Exhibit Memo Form dated 27.02.2012 and it was marked MFI 59.
 - d. The Government Analyst Report, Ref. A45/12 dated 14.11.2016 and it was marked MFI 60.
 - e. A table attached to the Report and it was marked as MFI 60.
 - f. A DNA Profile marked A45/12 attached to the Report and it was marked MFI 60(1).
103. She produced the Report and annexures thereto as exhibits 60 and 60(1) respectively.
104. The 20th witness explained the inordinate delay as follows: that there were inadequate members of staff, lack of chemical reagents, change of management and lack of a seamless handover system from one regime to another, the analysis having been handled by several officers who may have left service.
105. In his testimony, the 21st witness, Senior Sergeant Richard Maobe, told this court that he was at the time based at DCI Kilimani but at the time of testimony based at the DCI Nyatike in Migori. He told this court that he was one of the Investigating Officers. He recalled that on 17.02.2012, he was on duty when he was summoned by the then DCIO, Superintendent Meeme and instructed to take over investigations from CIP Lagat. He recalled that he proceeded to meet CIP Lagat who handed over:
- a. the investigation file;
 - b. exhibits including:
 - i. a laptop;
 - ii. two mobile phones;
 - iii. their chargers;
 - iv. a bottle containing medicine; and
 - v. Assorted documents.



106. Senior Sergeant Maobe recalled that together with Corporal Sayanga, Corporal Kimani and PC Some, they proceeded to the scene. He recalled that since the place had been dusted for fingerprints on 14.02.2012 and that photographs had been taken, they proceeded to look out for other things. He recalled that they came recovered documents including documents written by Louis.
107. The 21st witness testified that later, they called witnesses and recorded their statements. He recalled that later that day, they summoned Louis to Kilimani police station where they interrogated him and recorded his statement.
108. Senior Sergeant Maobe told this court that Louis denied that he had a love affair with Careen. He told this court that they tried to establish whether there was communication around that time between Louis and Careen but since his phones were off, they failed. He told this court that Louis told them that during that period, he was in Kajiado area.
109. The 21st witness told this court that they failed to get evidence of murder. He told this court that the laptop and phones were forwarded to the Cybercrime Unit for forensic analysis but they failed to get any evidence from the laptop and phones. He testified that all samples which were taken from the body of Careen were taken to the Government Chemist for analysis and that the results did not place Louis at the scene.
110. Senior Sergeant Maobe identified the Exhibit Memo Form prepared by Corporal John Biko and two others prepared by Sergeant Kimani (MFI 57, 58 and 59). He identified two payslips for Careen and they were marked MFI 61A and 61B. He testified that at one time, Careen and Louis travelled together to Johannesburg, South Africa and back, aboard Kenya Airways, on 27.10.2011. He identified two air tickets and they were marked MFI 62A and 62B. He produced MFI 57, 58, 59, 61A, 61B, 62A and 62B as exhibits 57, 58, 59, 61A, 61B, 62A. he testified that there was physical injury on the body. He told this court that he did not subject the phones of Louis to forensic examination. He testified that when they tried to call at the material time, the calls were not going through as they were switched off and thus they did not consider it important to subject them to analysis. He testified that they were unable to verify the information given by Louis that he was in Kajiado at the material time because his phones were switched off. He testified that he did not visit the place where Louis claimed to have gone. He testified that he is the one who wrote to the DPP for and on behalf of the DCIO to recommend an Inquest.
111. In his testimony, the 22nd witness, Inspector of Police (IP) Samuel Kimani told this court that he was at the time based at DCI Kilimani but at the time of testimony based at the DCI Kakamega. He told this court that he was one of the Investigating Officers and at the time a Sergeant. He recalled that on 17.02.2012, he was on operations duty when he was summoned by the then DCIO, Superintendent Meeme and instructed to join a team led by Senior Sergeant Maobe to investigate an incident where a lady had been found dead in her house.
112. The 22nd witness recalled that they took over from CIP Lagat. He recalled that together with Senior Sergeant Richard Maobe, PC Some and Corporal Sayanga, they went to Santonia Apartments, Apartment number A17. He told this court that he remained at the door to be on guard as the rest went in. He told this court that they returned after his colleagues collected things from the house including documents one of which included a note addressed to the OCPD Kilimani on extortion and another note addressed to Hosea Kili by Loius.
113. IP Kimani recalled that on 20.02.2012, he was summoned with the DCIO Superintendent Meeme to his office and he found Loius there. He recalled that he was instructed by the DCIO to escort Loius to the Spine Injury Hospital to be taken samples and his body examined for scratches. He recalled that



he did so and that nail clippings and blood samples were taken by Dr. Dennis Otworu and preserved in an envelope and two bottles respectively. He told this court that Dr. Otworu also wrote a report (MFI 61) and gave him. He told this court that upon return to the station, he briefed the DCIO and Senior Sergeant Maobe and that he prepared an Exhibit Memo Form to forward the samples to the Government Chemist (exhibit 58). He told this court that he took the samples to the Government Chemist.

114. IP Kimani denied that he substituted the nail clippings of Loius before taking them to the Government Chemist. He told this court that they chose the Spine Injury Hospital because of proximity to the station. He told this court that he did not alter the handwritings on the exhibit Memo.
115. In his testimony, the 23rd witness, Inspector of Police Sylvester Simba Ndwiga, told this court that he is based at the DCI Nairobi County. He told this court that he is a Scenes of Crime Officer. He recalled that on 14.02.2012, at around 1430 hours, he was raised on police radio by CIP Lagat and requested to accompany him to the scene where a lady was found dead, to document the scene. He told this court that he went there and did the documentation by photographing including the gate, Santonia Court Apartments, door leading to the Apartment A17, the bedroom door, handwritten notes recovered from the house and the body. He testified that he prepared a certificate in that regard. The photos were marked MFI 64. The Report and certificate were marked MFI 65. The Dispatch notes were marked MFI 66. He produced them as exhibits 64, 65 and 66 respectively.
116. In his testimony, the 24th witness, Doctor Dennis Otworu Onsinyo, told this court that he is a medical doctor based at the National Spinal Injury Hospital. He told this court that he has practiced as such since 2007. He recalled that on 20.02.2012, at around mid-day, two police officers came with a person and requested that samples of bloods and nail clippings be taken from him. He told this court that the person consented to being taken the samples. He told this court that he drew blood from the person and preserved it in two BD bottles with a red caps and labelled them with the names of the person, the date and number of the patient. He told this court that he also removed nail clippings and put in an envelope. He testified that he handed over the samples to the officer. He told this court that he signed the two forms for blood and nail clippings. He told this court that he made a Report. He identified the report and it marked MFI 63. He told this court that a physical examination of the body did not reveal any scratch marks, bruises, or lacerations. He told this court that he handed over the Report and samples to the officer. He produced the Report as exhibit 63 and the annexure as exhibit 63(1).
117. In his testimony, the 25th witness, Vincent Mabu, told this court that he is a Security Manager cum Liaison Officer at Airtel, employed in 2012. He recalled that on 02.03.2012, the DCIO Kilimani requested for information regarding a sim card, International Mobile Equipment Identity (IMEI) Number 8925403062102743571. In particular, the said DCIO requested the following details in that regard:
 - a. The registration details of the user and the identity card number.
 - b. The PIN code of the sim.
 - c. The PUK number.
 - d. Records of communication from January 2012 to 15th February 2012.
118. In response, a letter dated 12.03.2012 was addressed to the said DCIO giving the details as follows:
 - a. The sim card was registered in the name of Careen Kili of identity card number 24701175, born on the 1st day of January, 1980.



- b. The call data records was supplied and attached to the letter for the period running between 1st January, 2012 to 15th February, 2012.
 - c. The said sim card was mapped to phone number 0733 53 57 44.
119. The 25th witness testified that they requested the data from their back-up in India but the data supplied misses the following dates: 10.01.2012; 14.01.2012; 17.01.2012; 18.01.2012; 21.01.2012 and 31.01.2012. Mr. Mabu explained that the said missing data could not be found in the server located in India.
 120. Mr. Mabu identified correspondence by email, between Kenya and India, in regard to this subject and it was marked MFI 67. He told this court that sometimes such hitches occur. He told this court that this was the first time he came across such an incident. He identified the call data records and it was marked MFI 68.
 121. The 25th witness testified that from the said call data records, on 13.02.2012, at 1813 hours, there was a voice call from 0722 512 540 for a duration of 15 seconds. He further testified that on 14.02.2012, at 1033 hours, there was a voice call from 0721 693 013, for a duration of 17 seconds. He further testified that on 14.02.2012, a short message was received from 0735 624 691 at 1833 hours (Exhibit 49). He further testified that on 14.02.2012, a short text was received from 0722 497 724 at 1925 hours. He said that some information missing on exhibit 68 can be found in exhibit 49.
 122. Mr. Mabu produced the letter and call data records as Exhibits 67 and 68 respectively.
 123. Mr. Mabu testified that the contents of a text message can only be retrieved within a period of 30 days from the date it was sent because there is no sufficient space to keep all the data.
 124. Upon inquiry by this court, Mr. Mabu explained that exhibit 49 was obtained from the servers in Kenya and exhibit 68 was obtained from the back-up server in India.
 125. In his testimony, the 26th witness, Dr. Johansen Oduor, told this court that he is a Pathologist at the Ministry of Health since 2008. He recalled that together with Dr. Moses Njue who was then the Chief Pathologist, he conducted an autopsy on Careen on 16.02.2012 at the Lee funeral Home and the following findings:
 - a. Upon conducting an external observation:
 - i. Careen was dressed in a grey tracksuit trouser, a navy blue jumper and a brown vest.
 - ii. The body was of a female, African, 26 years of age, 158 cm tall, with hair measuring 11 cm long.
 - iii. The skin was discoloured on the face, the neck and back.
 - iv. There was peeling-off of the skin on the right shoulder.
 - v. She has peripheral sinuses and discolouration of all nails due to lack of oxygen.
 - vi. There was bleeding under the left eye (sub-conjunctival haematoma of the left eye).
 - vii. There was bleeding under the skin of the right forearm, on the front.
 - viii. There was bleeding under the skin on the muscles of the front side of the neck.
 - b. Upon conducting an internal examination:



- i. On the chest, there was pleural adhesion (lungs were not in the chest cavity). This may point to previous infections of the lungs, which had healed.
 - ii. The lungs were decomposing.
 - iii. The heart was normal.
 - iv. The stomach had a minimal brownish fluid substance.
 - v. The liver was decomposing but was normal.
 - vi. The uterus was empty and normal.
 - vii. The head and brain were normal.
 - viii. The spinal cord was normal.
126. Dr. Oduor testified that together with Dr. Moses Njue, they concluded that the features suggested asphyxia (lack of oxygen to the body) occasioned by manual strangulation. Dr. Oduor together Dr. Moses Njue inferred that the haematoma on the forearm was suggestive of defensive injuries. He also inferred that the haematoma in the left eye may have been caused by congestion of pressure at the neck area leading to rupture and bleeding of blood capillaries in the eye. He also inferred that bleeding under the muscles on the front neck was caused by the pressure on the neck, leading to rupturing of the blood vessels under the muscles.
127. Dr. Oduor told this that since they thought of a sexual activity, since she was not in her underpants; they took a vaginal swab for histology and toxicology. They also took the following samples for toxicology and histology: stomach contents, one kidney, blood and portions of the liver.
128. Dr. Oduor told this court that the histology was to be conducted by Dr. Njue. He told this court that the samples for toxicology were handed over to PC John Biko.
129. The 26th witness produced the Autopsy Report as exhibit 4.
130. In his testimony, the 27th witness, Manasse Mwaura Ngumi, told this court that he is an employee of Suzan Duty Free Ltd., as Liquor Shop Manager, located in Jomo Kenyatta International Airport (JKIA). He told this court that he knew Careen after she was introduced to him by Loius at a time they were flying out of the country together. He testified that Loius used to buy cigars from the shop. He testified that Loius told him that Careen will be making purchases on his behalf. He testified that Careen took his phone number therefore and she could call and place an order for the cigars. He recalled that in the month of February 2012, Careen called him and placed an order for Davidoff cigars worthy Kshs. 310 USD and that she informed him that she will pay through Mpesa. He recalled that she sent a driver to pick and he picked the cigars. He recalled that Careen failed to pay and he was therefore forced to call her on the following day using his phone number 0722 497 724. He testified that Careen informed him that she was in remote area in Marsabit and she will pay upon return. He recalled that when she failed to meet her promise, he called her again and she told him that they were back in Nairobi but Loius had been admitted in hospital and thus requested for patience. He told this court that fortunately, Loius called him shortly after the conversation to check on him and he informed him to pay the amount but Loius expressed shock that he was not aware of the transaction. He testified that Loius promised to make a follow-up and revert. He testified that Careen called him shortly after and asked him to lie to Louis that she had paid but he declined to lie. He told this court that he continued to call her persistently but she reached a point where she was not picking his calls. He testified that he later learnt from the media that she was found dead. He told this court that he



- decided to repay the money. He testified that it could be true that he called Careen on 14.02.2012 since he was calling persistently.
131. In his testimony, the 28th witness, Daniel Hamisi, told this court that he works at Safaricom, Security Department, as a Liaison Officer since January 2014. He recalled that the Liaison office was served with a court order in Miscellaneous Application Number 64 of 2017, issued at Milimani Law Courts, dated 19.05.2017 and required to provide the registration details of 5 safaricom accounts namely:
- a. 0722 512 540;
 - b. 0722 795 792;
 - c. 0721 603 013;
 - d. 0722 702 787; and
 - e. 0720 497 724.
132. The 28th witness testified that he extracted the registration records as follows:
- a. 0722 512 540: Loius Armstrong Otieno, identity card number 11060519, registered on 23.04.2011.
 - b. 0722 795 792: Cecilia J. Kili, identity card number 6870482, registered on 30.01.2008.
 - c. 0721 603 013: Samuel Njuguna Gacheru, identity card number 222867, registered on 12.09.2008.
 - d. 0722 702 787: Hosea Kili, identity card number 3249662, registered on 26.11.2008.
 - e. 0722 497 724: Manasseh Mwaura Ngumi, identity card number 21735642, registered on 07.01.2008.
133. The 28th witness produced a certificate under section 65(8) of the *Evidence Act*. The order was marked MFI 69. The Application was marked MFI 70. The registration details of 0722 512 540 was marked MFI 71A. The registration details of 0722 795 792 was marked MFI 71B. The registration details of 0722 702 787 was marked MFI 71C. The registration details of 0721 693 013 was marked MFI 71D. The registration details of 0722 497 724 was marked MFI 71E. The reviewed order was marked MFI 72. The application for review was marked MFI 73. The certificate on the reviewed order was marked MFI 74.
134. The 28th witness produced MFI 71A-71E and 74 as exhibits 71A-71E and &4 respectively.
135. In his testimony, the 29th witness, Samuel Njuguna Gacheru, told this court that he is a driver in the French Development Agency, Nairobi. He recalled that in 2012, he was a cab driver. He told this court that he knew Careen as his client. He told this court that Careen could communicate to him by way of a text message and he could reply in the same format. He recalled that the last message he sent her was demanding his pay for cab services, which was in arrears. He told this court that he was using his phone number 0721 693 013. He recalled that there was day she sent him to pick a parcel at JKIA and he did. He recalled that there is day he tried to reach her by calling to request his pay but the call did not go through and thus he was forced to send her a text. Little did he know that she was no more. He recalled that he in fact called her on 14.02.2012 and they spoke.
136. In his testimony, the 30th witness, Dr. Moses Njue Gachoki, told this court that he is currently the Director of Embu Level 5 Hospital and that at the material time, he was the Chief Government Pathologist. He told this court that he was a pathologist serving at the Ministry of Health since



1988. He recalled that together with Dr. Johansen Oduor, they conducted an autopsy on Careen on 16.02.2012 at the Lee funeral Home to establish the cause of death. He told this court that after the autopsy, they took the necessary specimen. Based on the external observations and internal examination, they concluded the cause of death was in keeping with manual strangulation. He told this court that they suggested further investigations by way of examining the specimen taken. He told this court that they recommended histology and toxicology. He told this court that he retired soon thereafter and thus the histology was not done. He told this court that he left Dr. Oduor to take up from where he left. He told this court that the toxicology report would have helped in telling whether there were compounding factors like acting under influence of drugs or alcohol. He told the court that the purpose of the histology and toxicology was to widen the investigations. He told this court that toxicology should have been carried out on the blood samples, stomach contents and the liver at the Government Chemist. He told this court that histology should have been done by Dr. Oduor.

137. In his testimony, the 31st witness, Superintendent (Retired) Harrison Meeme, was the DCIO Kilimani at the material time. He told this court that in February 2012, he was informed by the then OCS Kilimani, CIP Mwangi, that a certain lady had been found dead in her house within Kilimani. He told this court that he formed a team of three officers namely Senior Sergeant Richard Maobe, sergeant Kimani and Corporal William Sayanga and instructed them to start investigations under the leadership of Senior Sergeant Maobe. He told this court that there was a lot of pressure from the Police Provincial Headquarters to conclude the investigations. He told this court that the Provincial Headquarters requested for the file after they recorded statements. He told this court that they were directed from the provincial headquarters to forward the matter to the DPP for directions. He told this court that there was no clear evidence of murder and thus they forwarded the file to the said headquarters for directions. He told this court that at his level, he did not handle exhibits. He told this court that the officer in charge of exhibits was Sergeant Kimani. He told this court that after failing to get evidence for murder, they recorded an inquest. He said his conclusion that there was no evidence was based on the statements he recorded from witnesses. He identified the letter in which he recommended an inquest and it was marked MFI 75. He told this court that the laptop was forwarded to the Cybercrime Unit for analysis. The letter was produced as exhibit 75.
138. On the 14.11.2017, led by Corporal William Sayanga, this court visited the scene namely Santonia Court Apartments. The following were the observations of the court:
- a. That apartment is a one-bedroom apartment and has a living room, one bedroom, a kitchen and a bathroom.
 - b. The apartment is on the topmost 3rd floor.
 - c. A17 outer door stands directly opposite the A18 outer door.
 - d. That the outer door stands directly in front of the bedroom door.
 - e. That the balcony faces the main gate.
 - f. The kitchen is next to and nearest to the living room.
 - g. The glass of water was next to the sink in the kitchen.
 - h. After the kitchen, the bathroom stands between the kitchen and bedroom.
 - i. That a roll of cotton wool was found at the upper compartment of the wardrobe.
 - j. The laptop was on a table standing next to the bed.



- k. The laptop was playing music.
 - l. The power cable was connected to the electric power source.
 - m. The bed was neatly tucked.
139. In his testimony, Police Constable (PC) Michael Kiprono told this court that he took over the matter from PC Paul Some who was transferred) on 05.05.2016 as the Investigating Officer. He told this court that by the time he took over, hearing of witnesses had not started and therefore he started by bonding witnesses. He told this court that he noted that there are people who communicated with Careen but were not listed as witnesses and thus he decided to investigate them. He told this court that he secured relevant court orders to investigate the phone numbers, recorded their statements and called them as witnesses. He named Manasseh Ngumi and Samuel Gacheru. He identified MFI 69, 70, 72, 73, 76, and 77 and produced them as exhibits 69, 70, 72, 73, 76 and 77 respectively.

Part IV: Points For Determination

140. This court has framed two points for determination:
- A. The manner and apparent cause of death of Careen Chepchumba Kili.
 - B. Whether there is evidence disclosed to support a proposition of criminal culpability (commission of an offence leading to the death of Careen Chepchumba Kili) by some known person or persons.

Part V: The Law, Procedure, Jurisdiction And Scope Of Inquests

141. The process for an inquest is designed to be inclusive, involving all conceivable parties; to the furthest extent practicable and as appropriate, to contribute to the fact-finding exercise.
142. In Victoria State, in South-Eastern Australia, a common law jurisdiction, in the case of *Domascewicz v State Coroner*, the court attempted to elucidate the nature of an inquest. The court opined that: -
- “An inquest is not a proceeding inter partes. It is part of an investigative process which is concerned, inter alia, to set the public mind at rest where there are unanswered questions about a reportable death.”¹²
143. In its nature, an inquest is inquisitorial. It accordingly and perfectly so, neatly suits the inquisitorial system.
144. In an adversarial legal system setting, the court finds itself in uncharted territory, playing roles, which ordinarily should be played by investigative agencies, and in particular, the National Police Service Commission as established under Article 243 of *the Constitution*.
145. With the advent of the *National Coroners Service Act*, 2017, this oddity has perhaps found a panacea and removed from court a rather awkward situation. Although the said Act came into force on the 7th day of July 2017, it has not been operationalized by constituting the service. How I wish that the Act is operationalized sooner than tomorrow.
146. The core purpose of an inquest is to establish the manner and cause of death and criminal culpability of any known person(s).

¹² *Domascewicz v State Coroner* [2004] VSC 528, at page 28.



147. The manner of death is the fashion that brought about the cause of death. The possible manners of death include: -
- a. Natural causes.
 - b. Accidental death which results from an accident or injury not intentionally caused by the deceased or by another.
 - c. Suicidal death which results from the intent by the deceased to terminate his/her own life by any means.
 - d. Homicidal death which results from an accident or injury when: -
 - i. The injury was intentionally caused by another person to the deceased; or
 - ii. A person acts in such a willful and wanton (reckless) disregard for life that his/her actions are likely to cause death like manslaughter or driving of a motor vehicle that causes a fatality while under the influence of alcohol or drugs.
 - e. Undetermined death which arises if evidence as to the manner of death is unclear and the evidence is not sufficient and conclusive to reach a verdict.
148. Section 385 of Criminal Procedure Code (herein after referred to as the CPC) provides that a magistrate of first and second class or one specially empowered by the Chief Justice shall hold an inquest.
149. The scope of Inquests is limited. Section 386 of the CPC provides that a police officer in charge of a police station or any other police officer specially empowered by the Minister in that behalf on receiving information that a person: -
- a. Has committed suicide; or
 - b. Has been killed by another or by an accident; or
 - c. Has died under circumstances raising a reasonable suspicion that some other person has committed an offence; or
 - d. Is missing or believed to be dead; shall give such information immediately to the nearest magistrate empowered to hold inquests.
150. The police are additionally required, unless otherwise directed by any rule made by the Minister, to proceed to the place where the body is and they are expected to investigate and then draw up a report on the apparent cause of death describing such wounds fractures, bruises and other marks of injury as may be found on the body and stating in what manner or by what weapon or instruments (if any) the marks appear to have been inflicted. This is based on the opinion of the person visiting the scene. That report is made based on the evidence compiled by officers specially trained on scenes of crime and forensic issues.
151. I have herein above pointed out that the scope of an inquest is narrow. It is not the business of this court, sitting in inquest, for instance to apportion civil or criminal liability lest it offends the Judicial Review principle against making decisions ultra vires. Section 387(3) of the CPC provides that where before or at the termination, the magistrate decides that an offence has been committed by a known person, the person will be arrested and there will be a new trial. However, this section has been challenged in multiple cases on constitutional grounds.



152. The jurisdiction of this court is limited to establishing whether there is evidence to support criminal culpability of any person(s) in the regard to the death of Careen Chepchumba Kili. Once the court forms an opinion in that direction, the opinion will not form basis of prosecution but rather for the consumption of the Director of Public Prosecution, who may wish to exercise the prosecutorial powers enshrined in Article 157 (4) & (6)(a) of *the Constitution*. In *Re Estate of Phillip Otieno Odhiambo (Deceased)*¹³, Majanja J. held that a magistrate sitting in inquest cannot, before or at the termination of the inquiry, if the magistrate has formed the opinion that the commission by some known person or persons of an offence has been disclosed, he shall issue a summons or warrant for his or their arrest, or take such other steps as may be necessary to secure his or their attendance to answer the charge; and on the attendance of the person or persons the magistrate shall commence the inquiry de novo and shall proceed as if he had taken cognizance of an offence. The learned Judge concludes that this will amount to arrogation of powers of the DPP. He states thus:-

“...Article 157(6)(a) of *the Constitution* which vests in the Director of Public Prosecutions the state power to “institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed,” does not permit the magistrate’s court to initiate criminal proceedings in a manner prescribed by section 387(3) of the Criminal Procedure Code.”¹⁴

153. In *Re Joyce Mumo Makenzie (Deceased)*¹⁵, Lenaola J. (as he then was) held that a Magistrate sitting in inquest cannot enter conclusive findings in the nature of an acquittal. The learned Judge states as follows:-

“As I understand it, an Inquest is conducted so that upon evaluating the evidence tendered, the court can determine the cause of death and whether probable cause has been established for a person responsible for that death to be prosecuted. In the instant case, the learned magistrate found for a fact that either, PW5, Cpl David Kambi or PW6, PC Denies Psamut or PW7 Cpl Benjamin Ngila were the persons who shot and killed the deceased, Joyce Mumo Makenzie. Having so done, it was her duty to examine whether there was probable cause for them to be prosecuted for either the offence of murder or manslaughter. She concluded that they were not to be prosecuted and she gave her reasons based on the evidence; that the shooting was accidental because the police officers were pursuing armed robbers who had committed a crime and the deceased, who was rushing her injured workers to hospital was shot by mistake. Was that decision equivalent to that of a trial court? In my mind the answer is in the affirmative. The learned magistrate was obligated to state why either the police officers should be charged with an offence and leave the trial to another court or why they should not be charged and why the investigation’s file should be closed. She did the latter but the decision was so conclusive, it was akin to that of a trial court. Having found that three persons may have been responsible for the death, the proper order to make was to order the DCIO Machakos to arrest the three police officers, and establish who to charge for the offence of manslaughter. To acquit them at an inquest is improper. In the event, I will revise the orders made and shall substitute that finding with the above finding.”¹⁶

¹³ *Re Estate of Phillip Otieno Odhiambo (Deceased)* [2015] eKLR.

¹⁴ *Re Estate of Phillip Otieno Odhiambo (Deceased)* [2015] eKLR, at page 2, paragraph 6.

¹⁵ *Re Joyce Mumo Makenzie (Deceased)* [2009] eKLR.

¹⁶ *Re Joyce Mumo Makenzie (Deceased)* [2009] eKLR, as per Lenaola J. (as he then was), page 2, paragraph 7.



154. In Republic Thro' CID Mwingi v. Julius Kilonzo Muthengi¹⁷, Dulu J. held that a magistrate court exercising its inquest powers cannot recommend a civil claim. The learned Judge states thus: -

“In my view the magistrate should not have recommended a civil claim by the family of the deceased. The law did not confer on him such powers. The magistrate should have recorded the findings on criminal culpability as well as his opinion that it was not specifically known who had killed the deceased and forwarded his opinion to the Attorney General, now the Director of Public Prosecutions under section 387(4) of the Criminal Procedure Code, for whatever action that office would deem necessary to take. Having found that the learned magistrate was wrong in recommending a civil claim and closing the file and since in my view there is no avenue for an appeal by the family of a deceased from the decision of an inquest, in my view this court's review jurisdiction is called into play in order to do justice. I thus exercise the review powers of this court delete or vacate the magistrate's order recommending a civil claim and closure of the file. Instead, in order that based on the findings on criminal culpability the ruling together with the opinion of the magistrate as to who was responsible for the death be and is hereby forwarded to the Director of Public Prosecutions for his necessary action.”¹⁸

155. Further elucidation on the nature of inquests is found in the English case of R V South London Coroner; Ex Parte Thompson. The court states as follows: -

“Once again it should not be forgotten that an inquest is a fact finding exercise and not a method of apportioning guilt. The procedure and rules of evidence, which are suitable for one are unsuitable for the other. In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish facts. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends, the judge holding the balance or the ring whichever metaphor one chooses to use.”¹⁹

156. Where the police officers are not able to establish the cause of death at the scene, Section 386(2) of the CPC provides that where the officer considers it expedient, the officer shall, subject to any rule made by the Minister forward the body, to a medical officer for examination, ensuring that transportation of the body shall not render examination useless. The medical officer is required to conduct an autopsy and make a report on the cause of death based on the evidence that they find upon examination. The report is then forwarded to a magistrate empowered to hold an inquest.

157. However, where the cause of death is known and is clear from the evidence available and the person(s) who caused the said death are identifiable, there will be no point in holding an inquest.

158. In any event, under Section 388(1) of the CPC, the DPP is vested with powers to direct a magistrate to hold an inquest in accordance with section 387 of the CPC. Section 388(2) of the CPC provides that where a magistrate terminates an inquest under Section 387, the DPP, where he considers that there is need for further investigations may direct the magistrate to re-open the inquiry and further investigations are then began, in which case the magistrate shall have full powers to re-open the inquiry and make further investigations and proceed in same manner as if the inquiry had not been terminated.

¹⁷ Republic Thro' CID Mwingi v. Julius Kilonzo Muthengi [2015] eKLR.

¹⁸ Republic Thro' CID Mwingi v. Julius Kilonzo Muthengi [2015] eKLR, at page 3.

¹⁹ R V South London Coroner; Ex Parter Thompson, quoted in Arnetts v Mccann [1990] 170 CLR 596 at 616.



159. Where the magistrate forms the opinion that death has occurred but no offence has been committed or that it has occurred through misadventure, then the magistrate shall record such an opinion accordingly.
160. In compliance with section 386 (1), the Divisional Criminal Investigation Officer in charge of Kilimani Police Division did give information about the death of Careen Chepchumba Kili, to the Director of Public Prosecutions (the DPP) and further in accord with the requirements of section 386(2), this court observes that the said officer did forward the body to the medical officer, (Doctors Johansen Oduor and Moses Njue), both pathologists by specialization, for examination.
161. In this case, the cause of death was embroiled in controversy as there was no clear evidence of the person(s) who committed the offence leading to the death of Careen.
162. In the instant circumstance therefore, the scope of this court is limited to establishing the apparent cause of death of Careen Chepchumba Kili and whether there is evidence disclosed to support a proposition by this court that there is criminal culpability (commission of an offence leading to the death of Careen Chepchumba Kili) by some known person or persons.
163. This court now turns to analyze the evidence and make findings thereon.

Part VI: Analysis Of The Evidence, Findings, Decision, Reasons For The Decision, Summary Of Conclusions And Recommendations

A. The Apparent Cause Of Death Of Careen Chepchumba Kili

164. Owing to the paucity of precedents in Kenya around the terminology applied namely the “cause of death”, this court thought it necessary to look elsewhere in other common law jurisdictions.
165. In the Australian case of *Re the State Coroner; ex parte the Minister for Health*²⁰, the meaning of ‘cause of death’ was discussed. It was held that a coroner is not restricted when interpreting the cause of death and for that reason, the ‘cause of death’, is not confined or restricted by concepts such as ‘direct cause’, ‘direct or natural cause’, ‘proximate cause’ or the ‘real or effective cause’, or whether it was ‘reasonably foreseeable.’ This position received vindication in *WRB Transport v Chivell*²¹ by Lander J with Mullighan J agreeing. In this case, Lander, J. said that in ascertaining the ‘the cause or circumstances of the... death of any person ...’: -

“The Coroner ... has to carry out an inquiry into the facts surrounding the death of the deceased to determine what, as a matter of common sense, has been the cause of that person’s death. The inquiry will not be limited to those facts which are immediately proximate in time to the deceased’s death. Some of the events immediately proximate in time to the death of the deceased will be relevant to determine the cause of death of the deceased. But there will be other facts less proximate in time which will be seen to operate, in some fact situations, as a cause of the death of the deceased. This is a factual inquiry which only has, as its boundaries, common sense.”²²

166. Therefore, it will be necessary, in each inquest, to delineate those acts, omissions and circumstances which are, at least potentially, to be characterized as causing or a cause of the death of the deceased. This

²⁰ *Re the State Coroner; ex parte the Minister for Health* [2009] WASCA 165 [16].

²¹ *WRB Transport v Chivell* [1998] SASC 7002; (1998) 201 LSJS 102 [20].

²² *WRB Transport v Chivell* [1998] SASC 7002; (1998) 201 LSJS 102 [20].



is to be undertaken by applying ordinary common sense and experience to the facts of the particular case.²³

167. There must be a causal link between the death and the matter under investigation to bring the matter within the scope of an inquest. In determining that a causal relationship exists, coroners use a “common sense” test of causation limited by principles of remoteness.

168. In *R v Doogan; ex-parte Lucas-Smith & Ors*²⁴, the Supreme Court of the Australian Capital Territory discussed this context while reviewing an inquest into the Canberra bushfires. The court stated that an inquest must examine both the initial ignition of the fire and the factors that caused the fire to spread, but must not become a form of Royal Commission. The court explained at paragraph 29 that: -

“A fine line must be drawn at some point beyond which, even if relevant, factors which come to light will be considered too remote from the event to be regarded as causative. The point where such a line is to be drawn must be described as the “common sense” test of causation affirmed by the high Court of Australia in *March v E & MH Stramare Pty Ltd* (1991) 171 CLR 506. The application of that test will obviously depend upon the circumstances of the case and, in the context of a coronial inquiry, it may be influenced by the limited scope of the inquiry which, as we have mentioned, does not extend to the resolution of collateral issues relating to compensation or the attribution of blame.”

169. In the decision of *Harmsworth v State Coroner*²⁵ Nathan J warned that unless a coroner confines an inquest using principles of remoteness and causation, then:-

“Such an inquest would never end, but worse it could never arrive at the coherent, let alone concise, findings required by the Act, which are the causes of death, etc.”²⁶

170. The need for a causal connection between the death and the subject matter of the inquest must be applied in a common sense manner. Like other judicial proceedings, coroners should receive all relevant evidence before making findings, comments and recommendations.

171. Dr. Johansen Oduor (the 26th witness) and Dr. Moses Njue Gachoki (the 30th witness), upon considering the following: skin discolouration on the face, the neck and back; perivascular sinuses (discolouration of all nails) due to lack of oxygen; bleeding under the left eye (sub-conjunctival haematoma of the left eye); bleeding under the skin of the front right forearm; bleeding under the skin on the muscles of the front side of the neck; the heart which was normal; the liver which was decomposing but normal; the uterus which was empty and normal; the head and brain which both were normal and the the spinal cord which was normal, concluded that the cause of death was in keeping with asphyxia (lack of oxygen to the body) occasioned by manual strangulation. They inferred that the haematoma on the forearm was suggestive of defensive injuries. They further inferred that the haematoma in the left eye may have been caused by congestion of pressure at the neck area leading to the rupture and bleeding of blood capillaries in the eye. The said experts inferred that bleeding under the muscles on the front neck was caused by the pressure on the neck, leading to rupturing of the blood

²³ *March v E & MH Stramare Pty Ltd* [1991] HCA 12; (1991) 171 CLR 506, 515 (Mason CJH), 522 (Deane J); *WRB Transport* [21]; *Saraf* [18] – [19]; *Doogan* [29].

²⁴ *R v Doogan; ex-parte Lucas-Smith & Ors*, (2006) 158 ACTR 1.

²⁵ *Harmsworth v State Coroner* [1989] VR 989 at 996.

²⁶ *Harmsworth v State Coroner* [1989] VR 989 at 996, Nathan J.



vesels under the muscles. They identified a Autopsy Report they made and the 26th witness produced it as exhibit 4.

172. This evidence was not controverted at all by the alleged suspect(Louis Armstrong Otieno, the 3rd witness herein) apparently because he distanced himself from the death.
173. Although the alleged suspect stayed clear in regard to the cause of death by insisting that he was at Kajiado during the material time, he alluded to the fact that Careen may have died out of her health complications of the liver, heart and kidney which he had made known to her parents and/or that she may have been killed by Hosea Kili, the 1st witness herein. He however failed to adduce any evidence at all in that direction.
174. Corporal William Sayanga (the 19th witness) testified that whilst searching Apartment A17 in Santonia Court Apartments (in which Careen's lifeless body was found), they recovered among others a document (herein above produced as exhibit 46), dated 04.11.2011, addressed by Louis to the father of Careen which reads:-
- “ We may be sworn enemies but put that nonsense aside for a moment. Careen may be gravely ill. She is potentially suffering multiple organ failure as diagnosed by a doctor in Nairobi Hopsital. They have said that she has a very weak heart, one sick kidney and a sick thyroid. Loius Otieno.”
175. In his evidence, Dr. Johansen Oduor (the 26th witness) and Dr. Moses Njue Gachoki (the 30th witness) found the liver and the kidney normal. This is recorded in their Autopsy Report (herein above produced as exhibit 4).
176. In addition, Dr. Charles Muthui Kariuki (the 16th witness), a Cardiologist who examined Careen on the 07.10.2011 when she went to his clinic, within Nairobi Hospital, complaining that her heart was beating faster than usual, dispelled the impression created by Loius that Careen was suffering from a life-threatening heart condition. Doctor Kariuki testified that upon examination, he gave Careen's heart a clean bill of health, but only affected by hyperthyroidism. The doctor explained that when the thyroid over-produces a hormone called thyroxin, it can casue the heart to beat faster than usual. In corroboration, he produced a medical Report dated 27,02.2012 (herein above produced as exhibit 5). An X-ray Request form for hyperthyroidism was also produced as exhibit 50. Contary to the impression created by Loius, Dr. Kariuki testified that hyperthyrodism is not life-threatening.
177. It is worthy noting that in his note, Loius bases his 'information' on a third party opinion and in this case, is apparent that he based his information on the medical opinion expressed by a Doctor working in Nairobi Hospital. Invoking rules of circumstial evidence, I gather the medical doctor he was reffering to was Dr. Charles Muthui Kariuki.
178. Having heard from the horse's mouth (Dr. Charles Muthui Kariuki), and upon subjecting the expert opinion to the document authored by Loius purportedly to Careen's father(exhibt 46), in the context of what the medical expert Loius was reffering to in his note (Dr. Charles Muthui Kariuki) told this court and the Report he produced (Medical Report, exhibt), which testimony and Medical Report in thier entirety contradict, discount and thus compeltely extinguishe the theory posted in the said note that Careen was "gravely ill..potentially suffering multiple organ failure as diagnosed by a doctor in Nairobi Hopsital..and that Careen had a very weak heart, one sick kidney," this court finds that the note (exhibt 46) is home to misrepresenattions and thus unrealible in so far what it purports to represent.
179. Consequently, the mind of this court is cleared of all doubt that the cause of death of Careen may have arisen out of health complications.



180. Having considered the state of the body of Careen namely the cotton which was stuffed in the nostrils, bleeding under the skin on the muscles of the front side of the neck, the relaxed normal sleeping position in which the body was found, the bedding which were neatly tucked when the body was found, bleeding under the left eye (sub-conjunctival haematoma of the left eye), bleeding under the skin of the front right forearm, this court finds it impossible to believe that it could not have been possible for Careen to take her own life and get the opportunity to stuff cotton in her nostrils, tuck the bedding neatly and taking normal sleeping position.
181. This position is further fortified by the following condition of the body upon: the skin discolouration on the face, the neck and back and the bleeding under the left eye (sub-conjunctival haematoma of the left eye).
182. Besides, this court has also considered the revelatory, tell-tale signs and state of things arising immediately before and after the body was discovered:
- a. The 4th witness (Emmanuel, the younger brother to Careen) who was the first person to enter the house found the outer door closed but not locked from inside. This is firmly suggestive of a third party who gained ingress and later egress, immediately Careen breathed her last, but the third party (as a matter of course) could not be able to lock the door from inside as he or she egressed.
 - b. The 4th witness (Emmanuel, the younger brother to Careen) who was the first person to enter the house found the bedroom door ajar. Again, this is robustly suggestive of a third party who gained ingress and later egress, immediately Careen breathed her last, but the third party (as a matter of course) could not be able to lock the door from inside as he or she egressed.
 - c. A note addressed to the OCPD Kilimani was recovered from the apartment (herein produced as exhibit 15). The note was hand-written by Careen. The note was dated 12.02.2012. The note bore a complaint about extortion. The subject of extortion was Louis Armstrong Otieno. Was it a mere happenstance that the note did not find its way to the target-the OCPD Kilimani?
 - d. Again, another note addressed by Louis to the father of Careen but not delivered (over which this court has offered an analysis herein below) was recovered in the house. In the note, Louis seems to suggest that Careen had a life-threatening condition. The veracity of these claims are analyzed herein below. The sum effect of the analysis below on this note is that the mind of the court, for reasons recorded infra, is left with enormous doubt whether the note was written on the 04.11.2011 as it purports to indicate. This element was not investigated.
183. In the circumstance, the mind of this court is cleared of all doubt that the cause of death of Careen may have been suicide.
184. This court, after deeply examining the state of things, finds that somebody must have tried to cover up criminal liability using suicide and/or health complications to explain away the death.
185. Reasons wherefore this court concurs with the findings of the two pathologists that the cause of death was in keeping with asphexia (lack of oxygen to the body) occasioned by manual strangulation.

B. Whether There Is Evidence Disclosed To Support A Proposition Of Criminal Culpability (commission Of An Offence Leading To The Death Of Careen Chepchumba Kili) By Some Known Person Or Persons

186. Key in this regard, was the evidence of Dr. Johansen Oduor (the 26th witness) and Dr. Moses Njue Gachoki (the 30th witness). The pathologists testified that during autopsy, they considered it



appropriate and thus removed stomach contents, one kidney, blood and portions of the liver for purposes of carrying out toxicology and histology upon the said specimen. These testimonies were corroborated by PC John Biko (the 15th witness) who also testified that the said specimen were removed from the body of Careen.

187. The Government Analyst (the 20th witness) told this court that the first batch of items over which analysis was requested were received on the 17.02.2012, and that the second batch was received on 20.02.2012 and the third batch received on 27.02.2012. It is worthy noting that the items which required a DNA profiling namely the mattress cover Careen was lying on at the material time, the bedsheet Careen was using at the material time, the top Careen was wearing at the material time, the trouser Careen was wearing at the time and the pillow on which Careen's head was resting at the material time, were presented 144 hours (6 days) after the incident. The mattress cover Careen was lying on at the material time, the bedsheet Careen was using at the material time, the top Careen was wearing at the material time, the trouser Careen was wearing at the time and the pillow on which Careen's head was resting at the material time, were analyzed 41,586 hours (1,732.75 days) after the incident. Now, in science, cognizant of the scientific fact that DNA profiles are highly affected by multiple external factors including microbial activity, chemical activity among others, and which activities degrade the DNA profiles, it is highly recommended that DNA profiling from such items can only yield results if conducted within a span of 72 hours (3 days) after the incident. This court has taken note of the explanations offered by the Investigating Officers and the Government Analyst (the 20th Witness) regarding the inordinate delay. The 20th witness explained the inordinate delay as follows: that there were inadequate members of staff, lack of chemical reagents, change of management and lack of a seamless handover system from one regime to another, the analysis having been handled by several officers who may have left service.
188. However, as much as this court may understand and take note of the explanations because the court understands that no human being or system is infallible, regrettably so, science does not recognize those explanations. Science is cruel. Science is rigid. Taking the scientific timeline set as the reference point, the presentation of the items for analysis was therefore 72 hours (3 days) late. Again, taking the scientific timeline as a reference point, the eventual analysis was therefore 41,514 hours (1,729.75 days) late and thus inordinately long, a distant way out of the scientifically recommended period of 72 hours (3 days) within which such items should have been presented and analysed, if at all the analysis is expected to detect fibres which can generate a DNA profile. As scientifically expected therefore, having been presented outside the 72 hours and invariably having been analyzed outside the 72 hours, the analysis failed to generate a DNA profile at all. In the face of science therefore, this analysis was bound to fail.
189. Regarding identity of the nail clippings, this court finds that something must have happened after the samples left the Spine Injury Hospital. Something either accidental or deliberate to occasion the mix-up.
190. The 21st witness testified that all samples which were taken from the body of Careen were taken to the Government Chemist for analysis and that the results thereof did not place Louis at the scene. However, his testimony was contradicted by himself shortly after being subjected to questions from this court and further contradicted by the testimonies of the 26th and 30th witnesses (Dr. Johansen Oduor and Dr. Moses Njue Gachoki) and the 20th witness (the Government Analyst) to the effect that the intended histology and toxicology was not carried out. After hearing from the Government Analyst, Dr. Johansen Oduor and Dr. Moses Njue, in regard to the histology and toxicology, it was abundantly clear to this court that the samples namely contents obtained from the stomach of Careen, the liver and kidney were not subjected to toxicology and histology. This court did not have the opportunity therefore to receive evidence on the findings about the specimen. Although orally asserting



so, the 21st witness did not deem it fit to produce the Report (if any) of such analysis. This court was perplexed by the failure to carry out histology and toxicology on the specimen, to say the least.

191. From the 21st and 31st witnesses (Senior Segeant Richard Maobe who was the head of the investigation team and Supretendet of Police Harrison Meeme who ws the DCIO), this court sought to understand the premise upon which a conclusion had been reached that there was no evidence of murder in the absence of analysis of the said samples and further, in the absence of DNA analysis of the items which had been presnted to the Governmetn Chemist (namely the bedding from Careen’s house, the nail clippings from Loius, the nail clippings from Careen, the blood samples from Careen and Loius). The the 21st witness admitted that indeed analysis of the said samples and DNA analysis had not been carried out by the time the DCIO concluded that there was no evidence to suatin a charge of murder and thus directed the file to be forwarded to the DPP with a request to direct a public inquest.
192. On his hand, the 31st witness asserted that they had already received the foresic analyis results and thus the basis. When the court asked the said witness to identitfy the results in court and produce as evidence, he turned around and admitted the available report is dated in 2016 (long after the impugned conclusion) and that there may have an oversight on their side.
197. This court finds that, contrary to the concurrence by the lead Investigator, Senior Segearnt Richard Maobe that indeed success of this investigation was hinged on forensic evidence, the team of investigators concluded that there was no evidence of murder and in this regard recommended an inquest to the DPP. In particular, this recommendation before receiving results of forensic examination of the specimen and items sent to the Government Chemist or before attempting to secure forensic evidence to the end that there was no murder.
198. By the time a letter was addressed to the DPP recomending an inquest, a Report from the Cybercrime Unit of the DCI regaridng foresic analysis of the laptop and phones had not been received.
199. By the time a letter was addressed to the DPP recomending an inquest, analysis of the specimen and items sent to the Government Chemist and a Report from the Government Chemist regading the items and samples forwarded thereto had not be received.
200. By the time a letter was addressed to the DPP recomending an inquest, a Toxicolgy had not been carried out and therefore a Report had not been received.
201. In this instance, I find that the investigators did comply to the extent of section 386(2) of the Criminal Procedure Code. However, instead of completing the investigations to compelement the findings by the patholigists, the investigators jumped the gun and recomended an Inquest. In the end, the findings of the patholigists were side-stepped instead of forming a basis for furthering, expanding and completing the investigations along the lines observed by the patholigists.
202. This court was confronted with difficulties to understand the reasons behind the conclusion that there was no evidence of murder, which conclusion came before the said samples had been analyzed and results conveyed to the team of investigators.
203. This court forms the opinion that CIP Sylvester Lagat did his best, all factors and surrounding circumstances taken into account including the fact that he was not serving in the Directorate of Criminal Investigations. Be that as it may, this court finds that the Commander who detailed CIP Lagat as the first Investigating Officer to arrive on the scene terribly failed to match the task at hand with experience, given that CIP Lagat was not then serving in the in the Directorate of Criminal Investigations. I must make it crystal clear that this is not an issue of competence or otherwise of CIP Lagat. But rather, an issue of experience on certain matters. While it wasn’t his undoing, CIP Lagat was not the best suited to be deployed to the scene on the first instance. An officer experienced



and thoroughly familiar with investigations of deaths under unestablished circumstances should have been the best suited to first visit the scene. I dare mention that owing to his service background as aforesaid, CIP Lagat was inexperienced in matters securing scenes of crime where a life has been lost under unestablished circumstances. It was abundantly clear to this court that the scene of crime was not preserved at all. It was not even secured appropriately. This court was dismayed by the fact that officers attached to DCI Kilimani (with experience which matches the task) were roped in on the third day, after the first visit to the scene by CIP Lagat. For instance, the body was removed before certain forensic processes were done. The body was removed before combing the beddings for fibres which are the key components to look out for in Deoxyribonucleic Acid (DNA) analysis. At the time the body was removed, the pillow, bedsheets, mattress, duvet and all other beddings were left behind without even locking or causing a lock-down of the apartment by the police and thus not properly secured. This would have secured any fibres requisite for analysis of the presence or absence of Deoxyribonucleic Acid (DNA). This came much later when the scene had already been encroached. Again, the clothes Careen was wearing at the material time should not have been touched before an expert scoured them for any fibres for purposes of examining presence or otherwise of fibres for DNA analysis.

204. Reasons wherefore this court concludes that the investigation was bound to fail, the scene of death having been mishandled.
205. Regarding the tablets the 18th witness, CIP Sylvester Lagat, recovered from the table in A17, they were not produced in court as exhibits. Neither was there a mention that they were presented to experts for analysis. This court was therefore disabled in making any material comment thereon and indeed entering any useful finding. It is possible that the results of analysis would have been the turning point of this inquest. Who knows? There was no reasonable explanation on why they were not presented for analysis.
206. Regarding the note addressed to the OCPD (herein above produced as exhibit 15), it seems to me that after the 12.02.2012 meeting of creditors in the family house at Rosepark Apartments and closely following the resolutions of the said meeting, Careen went and wrote the note to the OCPD Kilimani. However, for reasons not clear to this court, the note did not get its way to the addressee. Was it a mere happenstance that the note did not find its way to the target-the OCPD Kilimani? This line of thought was not investigated.
207. Further, in the note dated 12.02.2012, which was recovered from a dustbin in torn pieces condition, and which was herein above produced as exhibit 6, and which further, upon examination, was established by the 17th witness, Assistant Superintendent of Police Michira Ndege (the Forensic Document Examiner) to have been authored by Careen, Careen complains about spending copious amounts of money on Loius. She particularly singles out expenditure of Kshs. 3, 500,000 to pay school fees for Loius's children, hospital bills and fare. I dare opine that although the note (exhibit 6) was undated, commanded by circumstantial evidence, the note must have been authored by Careen after the Sunday 12.02.2012 creditors meeting in the Hosea Kili's house. After all, one of the resolutions was that she actively participates in the defrayment of the debts, of course with a helping hand from the parents.
208. Now, Loius was the alleged suspect in this inquiry. Which pegs the following questions in the mind of this court:
 - a. Did Loius see the notes (namely exhibits 6 and 15)?
 - b. Who tore and threw into the dustbin the note in which Careen complains about spending copious amounts of money on Loius (herein produced as exhibit 6)?



- c. Can one (in this case Careen) reduce her thoughts into writing only to thereafter tear the record and dump it in the dustbin?
 - d. The timing of the note taken into account, had she the opportunity to do so?
 - e. Could it be that Loius saw this note (exhibit 6), was very uncofrotable with it and did what anger can ordinarily drive one to do? Tearing the note and throwing it in the dustbin?
 - f. And if he saw, could it be that the complaint (reduced into writing) may have catalyzed the death of Careen or was it a mere happenstance?
209. Again, this line of thought was not pursued by the team of investigators.
210. The same questions peg themselves in regard to the note addressed to the OCPD Kilimani (herein produced as exhibit 15), complaining about extortion by Loius.
- a. First, how come it did not find its wa y to the said OCPD?
 - b. Was it possible that Loius (the subject of the complaint) saw the note?
 - c. Was it a mere happenstance that the note did not find its way to the target-the OCPD Kilimani?
 - d. If it was so seen by Loius, could it be that the complaint may have catalyzed the death of Careen?
211. Again, this line of thought was not pursued by the team of investigators.
212. The 1st and 2nd witnesses (the father and mother of Careen respectively alleged that the money which Careen, on several occasions, irregularly obtained from the from the 1st witness (her father) and the stupendous sums of money she obtained from creditors was used to run the alleged expensive lifestyle of Loius Armstrong Otieno.
213. The 18th and 19th witnesses collected documenatry evidence from the house of Careen which support the assertions of the 1st and 2nd witness (the father and mother, respectively, of Careen). A catalogue of documentary evidence was identified and produced as exhibits as set out hereunder:-
- a. A torn note dated 12.02.2012 (herein above produced as exhibit 6) which chronicles how and why Careen irregularly obtained the money from her father and why she borrowed a lot.
 - b. A receipt for Kshs. 800,000 issued for payment of motor vehicle, a Volkswagen Golf, dated 17.11.2011 and herein produced as exhibit 2. This court, having taken into the testimony of Edward Kiplimo Bitok, Careen's uncle, that he helped her secure a loan of Kshs. 800,000 from a shylock, and he stood as a guarntor, inferred that this amount may have been applied in this instance. This is further supported by the circumstances that the seller of Range Rover, Subru Motors, had exercised his repossession right and thus Careen left without a car.
 - c. A loan application form from Hendrix Auto Parts herein produced as exhibit 9. On the face of the application, one may infer that one of the beneficiaries of the loan is Loius.
 - d. A Cooperative Bank cheque requisition form dated 30.01.2012 and herein produced as exhibit 10.
 - e. A complaint note addressed to the OCPD Kilimani, herein produced as exhibit 15.



- f. A light green handwritten note on which various names and amounts were written as follows: Samuel Thuku-100k; Cherotich-100k; Careen-20k; Daniel-15k; Anold-240k; Salon-7,600; Danson-5k; Total-987,000. This note was produced as exhibit 16.
- g. Another pink handwritten note written “I promise once again that when we are done, usually dealing with your issues, we will start dealing with issues of mine.” This note was produced as exhibit 21.
- h. Another pink handwritten note written “Joyce-10k; Raymond-10k. This note was produced as exhibit 22.
- i. A pay-in-slip from NIC Bank in the name of Loius Armstrong Otieno for Kshs. 60,000, Serial Number 1547142. This slip was produced as exhibit 25.
- j. A voucher from Nairobi Hospital, Serial Number IDE 10476/11 in the name of Loius Armstrong dated 29.09.2011 at 0126 hours for Kshs. 65,470. This voucher was produced as exhibit 28.
- k. A voucher from Nairobi Hospital, Serial Number IDE 10477/11 in the name of Loius Armstrong dated 29.09.2011 at 0126 hours for Kshs. 30,000 and the cardholder is Careen Chepchumba. This voucher was produced as exhibit 29.
- l. Invoice in-patient final details from Nairobi Hospital, Invoice Number HFB 18433/11 in the name of O.L. Armstrong, with five pages, dated 29.09.2011. This invoice was produced as exhibit 30.
- m. A card written Careen C. Kili and a voucher number is ORE 26206/11 dated 04.10.11 from Nairobi Hospital. This card and voucher were produced as exhibit 31.
- n. A voucher from Nairobi Hospital, Serial Number IDE 10970/11 in the name of Otieno Loius Armstrong dated 11.10.2011 for Kshs. 13,869. This voucher was produced as exhibit 32.
- o. A voucher from Nairobi Hospital, Serial Number IDE 10970/11 in the name of Otieno Loius Armstrong dated 11.10.2011. This voucher was produced as exhibit 33.
- p. An invoice from Nairobi Hospital, Invoice Number HFB 18433/11 in the name of Armstrong Louis Otieno, dated 11.10.2011. This invoice was produced as exhibit 34.
- q. A voucher from Nairobi Hospital, Serial Number OBR 185569/11 in the name of Otieno Loius Armstrong dated 26.09.2011. This voucher was produced as exhibit 35.
- r. A voucher from Nairobi Hospital, Serial Number OBR 104632/11 in the name of Otieno Loius Armstrong dated 03.06.2011. This voucher was produced as exhibit 36.
- s. A voucher from Nairobi Hospital, Serial Number ODE 10385/11 in the name of Otieno Loius Armstrong dated 27.09.2011. This voucher was produced as exhibit 37. It was paid by Careen C. Kili. Attached is the admission Form Number 116258 dated 27.09.2011. This Admission Form was produced as exhibit 37A. This is also accompanied by an interim bill, 3 pages. This Interim Bill was produced as exhibit 37B.
- t. An admission note from Nairobi Hospital for Otieno Loius Armstrong dated 27.09.2011. This note was produced as exhibit 38.
- u. A receipt Number 5292 issued by the Dental Place Ltd for Otieno Loius Armstrong for Kshs. 250,000. This receipt was produced as exhibit 39.



- v. A note from Nairobi Hospital for Otieno Loius Armstrong bearing prescription. This note was produced as exhibit 40.
 - w. An invoice attached to the above prescription dated 24.10.2011, Invoice Number ORE 282585/11. This Invoice was produced as exhibit 41.
 - x. A transaction receipt issued by Cooperative bank dated 16.12.2011 for withdrawing Kshs. 1,249,000 from the bank account held in the name Kili Careen Chepchumba. This receipt was produced as exhibit 42.
 - y. A receipt number 11831 dated 22.09.2011 in the name of Loius Otieno. This receipt was produced as exhibit 43.
 - z. A notification of discharge Serial Number 27277 issued to Loius Otieno. This notification was produced as exhibit 44.
 - aa. A receipt of payment issued by Nairobi Hospital to Kili Careen Chepchumba for paying Kshs. 130,000. This receipt was produced as exhibit 45.
 - ab. A Motor Vehicle transfer form dated 19.10.2011 between Stephen Mwangi and Careen Chepchumba Kili for motor vehicle registration number KBN 967W with a copy of the ID of the said Mwangi and a copy of ID of Careen attached. This Transfer Form was produced as exhibit 52.
 - ac. A tenancy application form in the name of Careen Chepchumba Kili for the an apartment in Rosepark Apartments, for a period of three months at Kshs. 168,000 from 13.07.2011, with a receipt number 0064 attached. This application was produced as exhibit 53.
 - ad. A cash deposit slip of Kshs. 84,000 from Stima SACCO Ltd, into account number 5020966120. This slip was produced as exhibit 54.
 - ae. Another cash deposit slip attached to MFI 54, dated 16.12.2011 for Kshs. 700,000, by Careen, into account number 5020694700, account held by David W. Cherote. This slip was produced as exhibit 55.
 - af. Two written pay statements for Careen. They were produced as exhibits 61A and 61B.
 - ag. Air tickets to Johannesburg, South Africa and back, for Careen and Louis, aboard Kenya Airways, on 27.10.2011. They were produced as exhibits 62A and 62B.
214. There was overwhelming evidence, especially emanating from the 1st, 2nd, 3rd, 4th, 5th, 6th, 18th and 19th witnesses and corroborated by documentary evidence produced by the 18th and 19th witnesses to the effect that during their time together, Careen could foot expenses for Loius to wit: school fees and medical bills.
215. There was therefore insurmountable evidence that as a consequence, Careen had accumulated debts as follows:
- a. She was indebted to her father in the sum of Kshs. 410,000 (which this court could not establish whether it has since been settled).
 - b. She was indebted to Elly Kimani Kshs. 250,000 (which this court could not establish whether it has since been settled).



- c. She was indebted to Dr. Motende in the sum Kshs. 1,000,000(which this court could not establish whether it has since been settled).
 - d. She was indebted to Paul Ng'ang'a in the sum Kshs. 50,000(which this court could not establish whether it has since been settled).
 - e. She was indebted to Edward Bitok in the sum Kshs. 880,000 (which however Edward Bitok confirmed that it was cleared after the funeral as part of the funeral expenses).
216. On his hand, Loius admitted that he fell sick in 2012 suffering from acute pancreatitis. He further admitted that as a consequence, he travelled to South Africa in company of Careen, to seek medication. Louis however, and vehemently so, denied that his medical bills and airfare were funded by Careen.
 217. Further, Loius distanced himself from the assertion that the subject Range Rover, KBQ 122J, was bought by way of trade-in of the car then owned by Careen, a Volkswagen Golf, registration number KBN 967W, which was at the time of trading in valued at Kshs. 800,000 and that the balance was to be paid in installments and that they were actually being paid by Careen.
 218. On the other hand, Louis denied this assertion and instead testified that he bought the Range Rover by trading-in his Toyota Landcruiser registration plate number KAR 366S (as part of the payment) and that the deficit was to be paid in installments using money from offering media consultancy services. Loius testified that the dealer had all the records to this effect and that at the opportune time, the dealer called John will avail the records in court.
 219. When the said dealer, John of Subru Motors, appeared and testified before this court, this court found his testimony compatible with the testimony of the 1st witness (the father of Careen) concerning circumstances under which the Range Rover was purchased, but was prominently and absolutely incompatible with the testimony of his longtime client, Loius. His dealer went ahead to produce documentary evidence (see exhibit 2) to corroborate his testimony, which effectually and completely displaced the testimony of Loius in that regard.
 220. Having considered the testimony of the 10th witness, John Malogo Nderitu one of the Directors of Subru Motors, in the context of exhibits 2 and 3, this court finds that there was insufficient evidence to support a supposition that Careen assisted Loius to purchase of a car, a Landrover, Range Rover, KBQ 122J, (although the car was later repossessed by the seller for failure to pay the full purchase price) by surrendering her car, a Volkswagen Golf, registration number KBN 967W, in a trade-in arrangement, as alleged. This court finds that it was actually a Toyota Landcruiser registration plate number KAR 366S, which was offered in the trade-in arrangement (as part of the payment) and that the deficit was to be paid in installments.
 221. Contrary to the testimony that Careen did not and was not paying any bill on his behalf, the documentary evidence afore-listed tell otherwise. The said documentary evidence was not effectually and completely displaced by the mere denial by Loius.
 222. Upon considering the multiple facets evidence adduced namely oral, documetary and circumstantial, this court was strongly persuaded that the money which was obtained from creditors by Careen was largely applied towards bills which ordinarily should have been shouldered by by Louis. As evidenced from the documentary evidence aforelisted, these bills include medical bills, school fees and airfare to South Africa for medication. Without imputing ill motives or guilt on any particular person, this reason, would, by all standardss lead a person to cover his or her tracks.
 223. Regarding the relevant electronic devices, which ordinarily would have been exhibits in this inquest, I must underline that no significant evidence was adduced before this court to the end that the two



- cellphones and two Subscriber Identity Modules (SIM) cards namely 0733 535 744 and 0722 512 540, were subjected to any forensic examination. All the court was served with was oral testimony, which this court dares to conclude that it does not and cannot suffice in this case.
224. This court expected forensic experts to carry out a forensic examination on the laptop and two cellphones which were recovered from the apartment and which apparently belonged to Careen. Unfortunately, the said examination was not carried out and if it was, it was not presented before this court for consideration, despite this court incessantly asking for them. It was later indicated by the Investigating Officer that the items were not presented to the experts.
225. The 21st witness (senior sergeant Richard Maobe) testified that they did not subject the phones of Louis to forensic examination. He testified, rather casually, that having tried to reach him by calling and having found out that his phones were switched off; they were unable to track the International Mobile Equipment Identity (IMEI) numbers of the said phones. He testified that they were unable to verify the information given by Louis that he was in Kajiado at the material time because his phones were switched off. He testified that he did not visit the place where Louis claimed to have gone. All the above circumstantial evidence taken into account, it was imperative that serious investigations be undertaken against the prime suspect. The suspicion was not farfetched. The good Investigating Officer, the 19th witness (Corporal William Sayanga (now Retired), seems to have put his reliance on tracing the location of Louis between 11.02.2012 and 14.02.2012 on the International Mobile Equipment Identity (IMEI) number(s). This option does not serve if the mobile device is put off. Besides, the officer said this is a casual way without producing corroborative evidence. He orally said that their efforts were frustrated by the devices being off. For instance, and in this connection, in this age of satellite-based radio-navigation system dubbed the Global Positioning System (GPS) technology, it dismays that police failed to pay urgent and indispensable attention to the issue of investigating the geolocation of Louis during the material time namely between the 1000 hours of 13.02.2012 when Careen last communicated using her mobile phone and the 1000 hours of 14.02.2012 when her lifeless body was found in her bedroom. This would have been possible by retrieving the geolocation information usually collected and stored by Google LLC using their web-based services namely Google Map which functions hand-in-hand with Google Drive, if the devices of the suspect were off at the material time. In my view, this would have been part of the key entry points in unravelling the truth.
226. Besides, in respect to a laptop and two phones recovered from the house of Careen, all Investigating Officers testified that they were indeed recovered from the house. However, none could speak authoritatively about their fate. The 21st witness (Senior Sergeant Richard Maobe) was one of the Investigation Officers. He told this court that the laptop and phones were forwarded to the Cybercrime Unit for forensic analysis but they failed to get any evidence from the laptop and phones. However, there was no proof that indeed the said laptop and phones were first taken to the said Cybercrime Unit and second that they were forensically examined. His testimony surprisingly started and ended with an oral account. It should be underlined that in such cases, documentary evidence is indispensable. For instance, no Exhibit Memo Form was placed before this court to prove that the said gadgets were taken to the Cybercrime Unit. No Report from the Cybercrime Unit was tendered before this court to prove that the said gadgets were forensically examined. This state of affairs subjects the veracity of his oral testimony to test. This court, premised hereon, was unable therefore, to conclude that it was so.
227. Regarding dusting for fingerprints, this court regrettably observes that no dusting for fingerprints was done. The door handles for the outer door, bedroom door and even the kitchen door should have been dusted. The laptop, the glass and the phones should have been dusted for fingerprints. Appalingly, the laptop which was recovered from the house was just returned to the family without being subjected to any forensic analysis. It was not even dusted for fingerprints.



228. Regarding the issue of missing communication data, the 25th witness testified that they requested the data from their back-up in India but the data supplied misses the following dates: 10.01.2012; 14.01.2012; 17.01.2012; 18.01.2012; 21.01.2012 and 31.01.2012. Mr. Mabu explained that the said missing data could not be found in the server located in India. Mr. Mabu identified correspondence by email, between Kenya and India, in regard to this subject. He told this court that sometimes such hitches occur. This court was not satisfied.
229. The 19th witness, Corporal William Sayanga told this court that while searching the Apartment A17 in Santonia Apartments (in which Careen's lifeless body was found), they recovered a document (herein above produced as exhibit 46), dated 04.11.2011, addressed by Louis to the father of Careen which reads:-
- “We may be sworn enemies but put that nonsense aside for a moment. Careen may be gravely ill. She is potentially suffering multiple organ failure as diagnosed by a doctor in Nairobi Hopsital. They have said that she has a very weak heart, one sick kidney and a sick thyroid. Loius Otieno.”
230. In his testimony, the 16th witness, Dr. Charles Muthui Kariuki (who this court deems an expert in heart diseases and conditons having practised as a cardiologist since 2001 and having studied for a Bachelor of Science in Medicine in the University of Nairobi and graduated in 1989 and further having studied internal medicine in the United Kingdom and graduated in 1998 and further having been trained as a Cardiologist in the United Kingdom) Careen came to the Nairobi Hopsital and was directed to his clinic on the 07.10.2011, complaining that her heart was beating faster than usual. He told this court that upon examination, he found the heart in good condition but sent her for blood test which test revealed that the thyroid was hyperactive (hyperthyroidism). A condition in which the thyroid overproduces a hormone called thyroxin and thus prescribed medicine and advised her to return after one month for review. He identified a Report dated 27,02.2012 and produced it as exhibit 5. This expert told this court that the hyperthyroidism was not life-threatening and that the overproduction of the thyroxin was causing the heart to beat fast.
231. It is worthy noting that in his note, Loius bases his 'information' on a medical opinon expressed by Doctor working in Nairobi Hopsital. Invoking rules of circumstial evidence, I gather the medical doctor he was reffering to was Dr. Charles Muthui Kariuki.
232. Now, this court had to hear from the horse's mouth. Upon examining the docuemnt authored by Loius purportedly to Careen's father(exhibt 46), in the context of what the medical expert Loius was reffering to in his note (Dr. Charles Muthui Kariuki) who priocuded a Medical Report (exhibt 5), which testimony and Mecial report in its entirety contradicts, discounts and thus compeltely extinguishes the theory posted in the note that Careen was "gravely ill..potentially suffering multiple organ failure as diagnosed by a doctor in Nairobi Hopsital..and that Careen had a very weak heart, one sick kidney.”
233. Reasons wherefore this court finds that the note (exhibt 46) is home to misrepresentations and thus unrealible in so far what it purports to represent.
234. In light of this, this note written by Loius (exhibt 46) evoked a string quetions in the mind of this court. First, if a document is addressed to the father of Careen on 04.11.2011, why didnt it reach the target? What could the cocument be doing in the house in which Careen lived instaed of being found in the addressee's house? Could it be that the document was written immediately before or immdetitaly after Careen lost her life, but backdated, to act as a sure cover up so that third parties would gather that Caareen died out of a grave illness and/or multiple organ failure and/or failure of the heart and/or failure of the kidney(s)?



235. The allegations by Loius that Careen was a victim of violence, including sexual violence were uncorroborated and thus not proven. On the contrary, Careen's brother, Emmanuel, testified that Careen was not suffering violence that she was not undergoing a troubled life, and if she was, she did not inform him.
236. These are the key issues the team of investigators should have concerned themselves about. It is unfortunate that I am raising them at this stage.

Part VII: Recapitulation Of The Findings

237. In sum analysis, the evidence on record compels this court to enter the following inevitable findings:
- a. The cause of death of Careen Chepchumba Kili was not out of natural causes. It did not arise out of health complications.
 - b. The cause of death of Careen Chepchumba Kili was not an accident.
 - c. The cause of death of Careen Chepchumba Kili was not suicide.
 - d. The cause of death of Careen Chepchumba Kili cannot be said to be undetermined.
 - e. The cause of death of Careen Chepchumba Kili was homicidal (by way of manual strangulation).
 - f. Having found no eye witness, forensic evidence was the sure key to unlock criminal culpability (commission of an offence leading to the death of Careen Chepchumba Kili) by some known person or persons. In fact, this investigation was hinged and turned on a composite of two key sources of evidence namely forensic and circumstantial evidence which were attainable from the following:
 - i. Dusting of fingerprints on among other items the door levers of the subject apartment, the glass of water that was recovered near the kitchen sink and the laptop.
 - ii. Forensically analyzing the laptop of Careen (which was found playing music at the time the lifeless body was found).
 - iii. Forensically analyzing the phones of Careen.
 - iv. Forensically analyzing the phones of Loius.
 - v. Undertaking Histology upon the specimen which were extracted from the body of Careen namely a piece of liver and kidney.
 - vi. Undertaking Toxicology upon the specimen which were removed from the body of Careen namely blood, contents of the stomach and a piece of the liver.
 - g. Inexplicably so, the investigation process suffered an abrupt death. As at the time of recommending to the Director of Public Prosecutions that a public inquest be pursued, investigation into whether there was any lead(s) to criminal culpability was incomplete, having reached this conclusion before forensic analysis and results of the forensic analysis were out. This court finds that the conclusion that there was no evidence to support a theory of murder was premature on the following planes:



- i. By the time the said sudden conclusion was reached, the dusting of fingerprints on among other items the door levers of the subject apartment, the glass of water that was found near the sink in the kitchen and the laptop had not been carried out.
 - ii. By the time the sudden conclusion was reached, the laptop of Careen which was found playing music at the time of finding the lifeless body, had not been forensically analyzed.
 - iii. By the time the sudden conclusion was reached, the phones of Careen had not been forensically analyzed.
 - iv. By the time the sudden conclusion was reached, the phones of Loius had not been forensically analyzed.
 - v. By the time the sudden conclusion was reached, histology upon the specimen which were extracted from the body of Careen namely a piece of liver and kidney had not been carried out.
 - vi. By the time the sudden conclusion was reached, toxicology upon the specimen which were removed from the body of Careen namely blood, contents of the stomach and the liver had not been carried out.
- h. In this context, this court finds the decision leading to the said sudden conclusion indefensible, mired in rashness, defective, devoid of merit and thus clearly unfounded.
- i. As a consequence, the idea and resultant decision to pursue a public inquest having been premature, it was intrinsically bound to produce immature and thus infirm results. Having been recommended prematurely, this court found the evidence irredeemably deficient, fragmentary, patchy and hardly explicable.
- j. The team of investigators failed to independently establish that Loius was indeed in the place he claimed to be in Kajiado County.
- k. The body was removed before certain forensic processes were done. At the time the body was removed, the pillow, bedsheets, mattress, duvet and all other beddings were left behind without even locking or causing a lock-down of the apartment and thus not properly secured.
- l. Regarding the DNA analysis, I find that the mattress cover Careen was lying on at the material time, the bedsheets Careen was using at the material time, the top Careen was wearing at the material time, the trousers Careen was wearing at the time and the pillow on which Careen's head was resting at the material time, were presented 144 hours (6 days) after the incident. I further find that the mattress cover Careen was lying on at the material time, the bedsheets Careen was using at the material time, the top Careen was wearing at the material time, the trousers Careen was wearing at the time and the pillow on which Careen's head was resting at the material time, were analyzed 41,586 hours (1,732.75 days) after the incident. Taking into account the scientific timeline of 72 hours (3 days) after the incident, and even in the face of the explanations offered by the Investigating Officers and the Government Analyst, presentation of the items for analysis was therefore 72 hours (3 days) late and the eventual analysis was therefore 41,514 hours (1,729.75 days) late and thus inordinately way out of the scientifically recommended period of 72 hours (3 days) within which such items should be analysed if at all the analysis is expected to detect fibres which can generate a DNA profile. In the face of science therefore, on the front of inordinate delay in both presentation of the items



for analysis and inordinate delay at the stage of analysis, this court finds that the DNA analysis, limited to finding fibre, was bound to fail.

- m. Regarding the nail clippings indicated as of the suspect Loius Otieno but after analysis found to be from a female, this court can only come to a general conclusion that there was either a deliberate act or an inadvertent mix-up. Taking multiple factors into account, this court is unable to single out one person who may have either deliberately designed or inadvertently mixed up the specimen.
- n. The allegations by Loius that Careen was a victim of violence, including sexual violence were uncorroborated and thus not proven.
- o. It follows that in the absence of forensic evidence and having not considered the circumstantial evidence, the far-reaching conclusion by the team of investigators that there was no evidence to support a theory of murder was hollow, devoid of merit and thus clearly unfounded.
- p. Ultimately, although there is sufficient evidence to support a proposition that the cause of death of Careen was in keeping with asphyxia resulting from manual strangulation, in the absence of evidence and in this case, in the absence of forensic evidence, this court finds that there is insufficient evidence to safely and neatly support a proposition of criminal culpability (commission of an offence leading to the death of Careen Chepchumba Kili) by some known person or persons including Loius Armstrong Otieno.
- q. In this context and in all earnestness, this court was unreasonably expected to perform a miracle.

Part VII: Recommendation

238. Reasons wherefore this court recommends to the Director of Public Prosecutions to exercise powers vested in that office (under Article 157 (4) of *the Constitution*) to direct police to re-open investigations. Without intent to constrict the discretion of the DPP in this regard, this court recommends that the DPP may wish to consider the following:

- a. The investigations be conducted comprehensively, with a firm focus on the gaps identified and unanswered questions framed herein above.²⁷
- b. Notwithstanding the generality of the foregoing, the re-opened investigations to center on forensic analysis including but not limited to the communications made by and the geo-location of Loius during the material time namely between 9 pm of the 12.02.2012 when Careen was dropped by her brother at Santonia Apartments and 14.02.2012 when the lifeless body of Careen was found in her bedroom. The geo-location is possible by retrieving the satellite-based radio-navigation system records dubbed the Global Positioning System (GPS) technology.
- c. That in respect to the nail clippings indicated as of the suspect Loius Otieno but after Deoxyribonucleic Acid (DNA) analysis found to be from a female, this court recommends that fresh samples be taken from Loius, in the presence of the Head of the Government Chemist who shall take the samples immediately thereafter, after relevant documentation by the police.
- d. That the mix-up of the said samples be investigated under the direction of the DPP.

²⁷ Under the analysis of evidence under the second point of determination (criminal culpability (commission of an offence leading to the death of Careen Chepchumba Kili) by some known person or persons) and under the list of findings.



- e. That the investigations to include circumstances under which the note addressed to the father of Careen but not delivered and the circumstances under which the note which was addressed by Careen to the OCPD Kilimani did not reach the target.

239. This court directs that this decision be extracted and served upon the Director of Public Prosecutions.

240. Orders accordingly.

WRITTEN, DELIVERED, SIGNED AND DATED BY C.N. ONDIEKI IN OPEN COURT AT KIBERA, NAIROBI, THIS 22ND DAY OF MAY 2018 IN THE PRESENCE OF THE FOLLOWING:

PROSECUTION COUNSEL:

COURT ASSISTANT:

ADVOCATE WATCHING BRIEF FOR THE FAMILY OF THE DECEASED:

SIGNATURE

C.N. ONDIEKI

SENIOR RESIDENT MAGISTRATE

CHIEF MAGISTRATE'S COURT AT KIBERA, NAIROBI THE MATTER OF THE PUBLIC INQUEST INTO THE DEATH OF CAREEN CHEPCHUMBA KILI, PUBLIC INQUEST NUMBER 9 OF 2012

