



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

COUNTY COURT NAME: MIGORI HIGH

COURT

CASE NUMBER: HCCRC/E019/2023

THE REPUBLIC VS AMOS MWITA CHIRAE

JUDGMENT

The accused person Amos Mwita Chirae is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

Particulars are that Amos Mwita Chirae on the 14th June 2023, at Mturio village, within Kuria West Sub-County in Migori County murdered Obadiah Nchagwa alias Peter Chacha.

The Prosecution tendered evidence of 12 witnesses to support the charge of murder against the accused and the accused in defense denied the charge.

PW1 Elizabeth Gati Marwa testified that she knew the accused for a period of 2 years. She said the accused is Amos Mwita and she knew his home. PW1 said she also knew the deceased Peter Chacha who was her brother-in-law.

She said that on 14.6.2023 at about 7.00am she was at her house at Mturio preparing her children Rael Marwa and others for school. That after the children had left, PW1 left home about 9.00am and went to Peter's place. She said that they used to sell alcohol -changaa and orange (meat). That they used to do the business at Peter's home which is 10 minutes from her home. She said she found Peter with about 3 people who had come to take changaa. It is me who started to sell to the people Sebina, Chafua. Peter's house is made of iron sheets on top and mud on the walls. It has two rooms and he used to live with his children. That alcohol got finished at 5.00pm and they sent for more. She said that they sent Wycliff Kibati and Chafua to go and get changaa from Rohalisi Ribalisi you use Kshs. 100 on motor bike to get there. That they waited but they did not return and the ones waiting for alcohol left and she remained with Peter. That Peter said he was tired and went to bed as PW1 sat in the sitting room. That at about 8.00pm somebody knocked on the door and he pushed it and it opened. The sitting room was separated from bedroom using sheet.

PW1 said there was a sunken lamp on the table which lit up the whole house. She said the person who entered the house was wearing sacks from the waist and had covered his mouth with a cloth and she could only see his eyes. The person was taller than her. That she screamed that they were dead and the person cut her on the right elbow two times, she was also cut on the neck, ribs and on



the nose. She said the person spoke Kikuria and said "they would see that day". He also said "today I



will kill you". PW1 said she did not respond to the attacker's threats. PW1 said she did not recognize the voice of the person who attacked her. She said that attacker used a panga to cut her.

PW1 said she managed to run away and called neighbours but they abused her. That she ran to the home of Paulo a doctor to help her but she got a motor cycle and took her to hospital at Sirare BMM. PW1 said she left the person who entered fighting with deceased. She said he was cutting the deceased who also got a panga to defend himself. That she left the deceased crying but she did not see where either of them was cut. PW1 went to report the matter at Kehancha Police Station.

That on 18.6.2023 PW1 went and recorded a statement in which she said the accused had been her lover for two years. She said that in June 2022 they had parted 8 months back. She said the deceased was her brother in-law and they were never lovers. She said the accused knew that she used to do business with deceased. She said that from accused's home to deceased one uses Kshs. 100 fare on a motor cycle. PW1 said that later she was treated at Kehancha. She identified the accused in the dock as Amos Mwita as the assailant.

In cross-examination by Ms. Okota PW1 said that on 18.6.2023 she went to the police station to record statement.

PW2 Paul Mwita Zakaria a farmer and a preacher in Christ Miracle in Nyamaronya Kuria East Gokeharaka location testified that on 14.6.2023 at about 11.00pm he was asleep with his family when he heard noises outside. Somebody was calling out for help "nisaidie nisaidie" and knocking at the neighbours. That he went out and found people. He also found Elizabeth crying and she was bleeding from the left side, nose, left ribs. PW2 said he knew Elizabeth who hailed from their village. That he pulled her, took his motor cycle and took her to hospital at Isebania -PMM and she was attended to and he went back home.

PW2 said that the next morning he heard screams and went where they were from within the village and found Peter Chacha had been murdered. That Elizabeth told him that she was attacked by thugs. PW2 said he did not know where Elizabeth lived and did not know the relationship between PW1 and deceased. He also said that he knew the accused Amos Mwita because he lives next to the road.

PW3 Lucas Rioba Kerario from Muturio village in Kuria East said he was a driver and farmer. He said that on 14.6.2023 at about 7.00pm he was from a journey with his vehicle going home and when he arrived at Gokeharaka at 6.45pm he alighted and found a person he knew as Amos Mwita Chirae the accused before court. He said they knew each other well and their homes are near to each other and the accused used to assist him with work sometimes. That when he found the accused he was shouting saying in Kuria that "Leo baeheka" – "today it will be known and that he would kill somebody or be killed." PW3 said he thought he was drunk because he used to drink. PW3 said he entered the entertainment place and stayed there until 11.00pm. That when he left and got into his vehicle Reg KCH 548U probox and drove towards Muturio through Gubikuku to Muturio he met Amos walking when he when he reached end of Gubikuku village near the river. That he decided to stop to talk to him but he ran off into the maize plantation. That he proceeded home and the next day his wife told him there was noise from neighbour Obadiah Nchagwa chacha or Peter Chacha Kerario. When he went there with his family they found Peter was lying dead in his house. He entered the house and noted he had many cut wounds -one on the left side of the neck near the ear, left hand, the left ribs which had penetrated up to the stomach. That started to think back about accused whom he last saw about 500 metres from Peter's home.

PW3 said that Gokeharaka is about 2km from deceased's home but when he met accused second time he was about 500 meters from deceased's home. Deceased's father – my elder brother was there and he said he had called police. That he recalled what accused had uttered and wondered where accused was that morning after police picked the body. That he started to look for accused and somebody informed him that he had met accused on the road to Nyamotombi. That he asked boda boda riders to help trace the accused. First report was made at



Kehancha police station.



PW3 said that on 15th June 2023 At 8.00pm he received a call and he was informed that Amos was in Kibirinto to Taranganya road. That he told the person to follow the accused and called Masangora police post and asked them for help. That in company of 3 others went to police station and took 2 officers and while being directed by the one following the accused person, they went to Nyabikongari and they were shown the house where the accused had entered. That they surrounded the house and when they knocked but they did not open. That an officer hit the door open and they found the accused in deep sleep and he was handcuffed and taken to Masangora police post and later was collected to Kehancha. PW3 later record his statement. He said he did not know whose home they found the accused. PW3 said that the accused was arrested about 8kms from his home.

He said that on 14th the accused was wearing a light blue T-shirt and black trouser and on 15th he was still wearing the same clothes.

PW3 in his further testimony said he knew Elizabeth (PW1) and he used to see her and the accused walking together. He said that Elizabeth used to live with deceased as husband and wife. He said he was not aware of the relationship between accused and Elizabeth. From the accused's home to Peter's home is about 2kms and one can walk for 20 – 25 minutes.

PW3 identified Photographs taken at the scene being a semi-permanent house with the roof made of iron sheet and mud walls where the deceased was murdered as Ex P1(a) – close to the house

Ex P1 (b) – inside the house and bloody floor

Ex P1 (c) – I found Peter in that posture and injuries

Ex P1 (d) – Injuries to Peter's shoulder

Ex P1 (e) – Injuries to Peter

Ex P1 (f) – The more serious injury

Ex P1 (g) – the house and blood on the table and

Ex P1 (h) – fence road close his home and we saw a panga there

When cross-examined by Ms. Okota PW3 said that he met Amos at Gokeharaka shopping centre when claiming that it would be known. Gokeharaka is about 2kms from Mutorio. They are two different centres. He said that from the utterances the accused seemed to be drunk as he was saying he would kill somebody but he did not mention anybody by name. He said the accused was outside the home he entered and he was walking but PW3 did not know where he was going. The witness said he let the accused go his way and he left the place at 11.00pm. PW3 said he does not take alcohol when driving.

PW3 said that when he later met Amos and called him and he ran. That Amos stopped for the vehicle to pass and when the witness stopped to ask why he was there – he ran off. He said that Amos had nothing in his hand at that time but he was still how he had seen him earlier. He had not fallen in any mud. He said that in Photograph (b) the house had blood scattered. Most was on the floor. It was on the bed, mosquito net, the sheet, utensils, table. It was splashed all over the house. He said that If one was there blood would have spill on them. He said he was not a police officer to conduct investigations. He said he asked somebody to follow the accused. He said the deceased was his brother's son and he was suspecting accused because of what he had said. Accused was found near Nyabikongari and he was in deep sleep but had no injuries on himself. The clothes were the same.

He was still with his bluish T-shirt. He was asked how come the T-shirt had blood. Police never asked him if accused had blood on his T-shirt. He said he did not see who killed deceased.

In re-examination PW3 said that at first he found the accused at Gokeharaka where he said it would be known that day and he would kill somebody that day.

PW4 Julius Chacha Kerario from Gekoharaka location -Kuria West Sub County and a farmer said that Peter Chacha known to him and was his son. That on 15.6.2023 he was asleep when he Emmanuel Chacha went to his home and informed him that Peter was dead. That Peter's home to PW4'S home



was about 5 minutes' walk. That he went to the house and found Peter Chacha dead. That he had



injuries on the neck, on the stomach, right hand three times and neck. That Police visited the scene and took the body to the mortuary. PW4 said he did not identify the body to the doctor. PW5 Dr. Mark Oduor Otieno a medical Doctor from Migori County Referral Hospital examined the body of one Obadiah Nchagwa Chacha on 13.6.2023 in Kehancha Sub County Hospital under escort of PC Tanui Gilbert for purposes of establishing cause of death. He said the body was identified by Buruna Kennedy and Daniel Omahe Mwita. That the postmortem was done at 1.30pm.

He said the body was of a male African about 38 years in good nutritional status, well built, 6ft There were early post mortem changes and was preserved well and embalmed

On external observations PW5 said that there were 4 major multiple cut wounds on head and neck with the first wound on the left mandible measuring 6 X 2CM and 4CM deep.

The 2nd wound was on the left lateral neck extended from left mandible to deep of shoulder it was 12 X 2cm and 6cm deep. It cut through the left vascular bundle which included carotid Artery and jugular veins both external and internal.

The 3rd wound was on the left side of occipital region 6 X 2cm X 4cm deep

The 4th wound was a transverse cut wound on upper side of neck measuring 6 X 2m and 4cm in depth.

The other cut wounds were on left upper limbs (forearm) 8cm X 2 X 4cm; deep cut wound on left thoracic region 6 X 4 X 6cm in depth.

On internal examination the doctor found that on the Respiratory there was a deep cut wound on the Left thoracic region measuring 6cmx2cm and 8cm in depth cutting through the 2nd and 3rd ribs.

That there was also mild hemothorax left sided

The digestive and genito-urinary systems were both normal

On the head 4 deep cut wounds were observed as shown at page 2 of the postmortem form

Nervous system, Spinal code and column were found to be normal

The doctor formed the opinion that death was caused by excessive bleeding due to assault by a sharp object. He said the cut wounds on forearm usually signified self defence mechanism. It means the deceased was trying to defend himself.

Post mortem was produced as PEX No. 1.

In cross-examination by Ms. Okota PW5 said it is possible that deceased was assaulted by many people but also it is possible that injuries were inflicted by one person.

PW6 Emmanuel Chacha testified that he was a casual worker. That on 15.6.2023 in the morning he went to call his brother Obadiah Nchagwa Chacha so that they could go to work but he did not respond. He said the door was open and he found his household things where on the floor. That he saw a torch on the floor. That when he opened the curtain and he found his brother who used to live alone on the floor dead. He said that the deceased' children lived with their father. PW6 saw that there was blood below the deceased and he had injuries to the left side of the neck and left hand. PW6 said he ran to his parents and people went to the scene and later he recorded his statement.

In cross-examination by Ms. Okota PW6 said he found things scattered everywhere – cooking implements, seats. He said the house was one roomed with a curtain separating it.

PW7 Daniel Omahe Mwita said he knew the deceased who was his cousin. He said he attended deceased post mortem on 19.6.2023 at Kehancha hospital where he identified the body.

PW8 No. 64715 Sergeant Thomas Mirumbe from Getonganya Police Post testified that on 15th of June 2023 he received phone call from Assistant Chief at 8.00am and he was informed that a murder had been committed in Mutorio village. In company of PC Kitatu, they proceeded to the scene and on arrival they found a person whose body had been cut severally and the body lay on the floor inside the deceased. He said the body was stark naked. He said that in the homestead there were 3 houses. PW8 said the body lay in a pool of blood on the floor with deep cuts with blood all over the body. He said the door to the house where they found body was open and there was a crowd of people at the



home. PW8 informed the OCS Kehancha Chief Inspector Boino and the DCI and he remained at the scene until DCI officers arrived and he handed over scene and went back to the post. That later at 10.00pm an informer went and told them that the main suspect was hiding somewhere. The informer and relatives of the deceased led him and PC Gitatu to where the suspect was hiding in Nyabikongoi village between the borders of Kuria East and Kuria West. That on arrival the home was cordoned before we entered. PW8 said he learnt the suspect's sister is married in the home where he was hiding. That the sister of the accused opened for them the entrance to the home and when they entered the house, they found the accused was hiding. He said it is the sister of the accused who identified the house where he was hiding after they failed to trace him from other houses.

He said the house in which the accused was hiding was locked from inside and he had initially refused to open but when police wanted to use force the suspect decided to open. It is then the relatives of the deceased in our company confirmed he was the suspect and he was arrested and escorted to the police post

PW8 then called the OCS Kehancha and DCI officers who went and collected the suspect and he recorded a statement. PW8 said that at the scene of murder they recovered a panga which had been left on top of a flowerbed which was outside the house and it had blood stains. (PW8 could not identify the panga as the Prosecuting counsel informed the court that it was still at the Government Chemist Lab)

In cross-examination by Ms. Okota Advocate PW8 said he arrested the suspect based on information given by an informer. He said the report was booked at Kehancha. He said the report by the informer was not booked and he was not one of the witnesses in court. He said he could not disclose name of the informer. He said they went to a homestead in Nyabikongoi where suspect was hiding. He said he did not know if the sister of the accused was a witness. He also said he had not known the accused prior to his arrest. PW8 said that he did not know where the accused person lived prior to date of incident but he found him living in his sister's homestead. He said that on the day of the incident the accused was at the scene of murder. That he knew the accused was hiding as he realized he hailed from Mutorio village. That the accused person opened the door after a long time and relatives of the deceased identified him as the attacker. He said he could not recall the name of the relative of the deceased who identified the suspect and whether the said relative of the deceased was a witness. PW8 said the Assistant chief John Getangira is the one who called and informed me there was a murder that had taken place in his sub location and when he was at the scene, he heard people say who the suspect was and he arrested accused based on the information given by informer.

In re-examination by Ms. Ikol PW8 said informers are used in the course of investigations. He said that murder investigations are handled by DCIO. He said he booked accused in Masangira police post and thereafter handed him to DCIO. There was more information that led to arrest of the accused.

PW9 No. 64510 Sergeant Livingstone Katui from DCI Migori crime scene support services section testified that on 21.6.2023 at around 10.30am he was requested by one Corporal Njogu from DCI Kehancha to prepare certificate for some photographs he had submitted to him. He said the photographs were 10 in number. I marked them 1 to 10 showing part of semi-permanent house with its door open. Photographs 1 and 2 were close up view of a body covered with blanket and 2nd one showed body of a person with several injuries on the body. Close to the body were blood stains, scattered clothes and a white mosquito net deeply stained with blood. That photographs No. 4, 5 and 6 showed close up view of the body with deep cuts on the neck and shoulders.

Photograph No. 6 shows deep cut wound in the body's armpit.

Photograph No. 7 shows close up view of a blood-stained table inside the house. Photograph 8 & 9 showed a panga inside green vegetation.



Photograph No. 10 showed the said panga after being removed from the thicket. The said panga has blood stains. PW9 later prepared certificate dated 23.6.2023 and signed and stamped. The photographs were also signed and stamped on the same date. He produced the photographs and certificate as Ex P2(i) to (x) and 3 respectively.

In cross-examination by Ms. Okota Advocate PW9 said the suspected murder weapon was in green vegetation and the investigating officer would be best placed to tell if the thicket where panga was found was in compound of the deceased.

PW10 Hon. Ann Karimi Njeru a Judicial Officer at Port Victoria court testified that she was formerly stationed in Kehancha from 2021 to November 2023. She said that the suspect Amos Mwita Chirae was taken before her on 16.6.2023 and she was requested to take his confession. That she recorded the suspects confession which she produced as exhibit. She said she interrogated the suspect before taking his confession. She asked if the suspect knew consequence of confessing and he confirmed and told her he was confessing voluntarily. That she caused him to take an oath and she went ahead and took the confession in the presence of her prosecutor Counsel, the Court Assistant and the officer who was guarding him

That the suspect gave his names as Amos Mwita Chirae ID No. 27334088. He told her he understood why he was in court on that day. That he said he had not been forced to confess. That after recording the confession on oath she read it over to the suspect again and he did sign by pen and also put his thumb print before she countersigned and stamped and dated. She produced the confession as exhibit -Exp 5.

In cross-examination by Ms. Okota Advocate PW10 said that The hand written statement is an extract of the records of the proceedings. She said that Article 49 of the Constitution are known to her. She said that from the confession the accused person was not informed of his right to representation by counsel neither is it shown that he was informed he had the right to have an advocate or relative present when he was making the confession but she said she asked the suspect orally if he needed an advocate or a family or his friend or any relative present as he wanted to make a confession. PW10 said she was conversant with Rule 4 of the out of court confession and admitted that she did not advise the accused that he could remain silent as he was the one who was volunteering to give the information. She said she was not informed the accused was tortured before he was brought to court and she did not see injuries on his body.

PW10 said that under Article 50(2)(i) of the Constitution – accused was informed verbally of right to counsel and right not to give self-incriminating evidence.

In re-examination by Ms. Ikol PW10 said the accused voluntarily told her he wanted to give a statement. That the accused was in a hurry to tell her what happened and said he was aware of the consequences and he just wanted to proceed with the matter. She said she didn't see any physical injuries on the suspect and he didn't tell her he was tortured. That the suspect was walking and he stood and talked normally.

PW11 Polycarp Lutta Kweyu Assistant Government Chemist at Kisumu testified that he received samples on 26.6.2023 for analysis namely:

1. Panga with black rubber handle marked A
2. Short sleeved white T-shirt with the words ATLANTE -marked B
3. Nails from Obadia Nchagwa Chacha – marked C
4. Blood sample from Amos Mwita Chirae – accused marked D

He was requested to carry DNA analysis and identify presence and origin of biological evidential material. I did analysis and established:

From preliminary results he found that the panga was heavily stained white T-shirt was moderately stained with blood of human being



From the DNA profile he made the following conclusions and opinion

1. DNA profile generated from panga A – matched DNA profile of Obadiah Nchagwa Chacha deceased
2. DNA profile generated from T-shirt part A1 on the shoulder matched DNA profile of Amos Chacha Chirae the suspect
3. DNA profile generated from part A2 of the T-shirt matched the DNA profile of Obadiah Nchagwa the deceased

PW11 prepared report on 13.1.2025, signed it and sealed with our seal -departmental seal. It was produced as Ex P5.

The exhibits were accompanied by an exhibit memo form. From the panga the blood stains generated DNA profile of the deceased.

In cross-examination by Ms. Okota Advocate PW11 said he was a Government Analyst and not a medical doctor. He said he did not extract blood samples from the accused person and he did not have any documents to show the person who drew blood samples from the accused. Sample was only indicated Mwita Chirae and he did not know from which facility it came from. There was no court order that accompanied the samples.

PW12 No. 74570 Corporal John Njogu. From DCI Kehancha conducted investigations herein. He testified that on 15.1.2023 at about 7.30am he received phone call from DCIO Kennedy Makana who told him they should meet in the office and proceed to a murder scene. That PC Tonui accompanied them to Muturio village and on arrival they were shown a home that members of public had crowded. They found a naked body in a house.

That the body had injuries on left side of neck, left hand and left side of the chest. That they took photographs outside and were shown a place in the live fence where a panga had been hidden and they recovered the panga and collected the body and took it to Kehancha Hospital Mortuary. That on inquiry they were told the deceased was with a woman friend during the incident and that the woman had gone to BNM hospital on Isebania. That they went to BNM hospital where they found Elizabeth Gati was admitted and she had injuries on the face and hands. On interrogation she told them she was sleeping with the friend Obadiah Nchagwa when around mid-night she heard the door kicked and Amos Mwita Chirae entered. She said Amos Mwita Chirae was her estranged friend. That Amos attacked her and her boyfriend using a panga.

PW12 said they returned to scene where they found members of public had apprehended 2 young men who were suspected to have been involved. That they arrested the young men and on interrogation they said that they left Elizabeth and the deceased. On 16.6.2023 the family of the deceased got information on the suspect Amos Mwita Chirae had been seen in Taranganya. They reported at Masangora police post and in company of officers they proceeded to Taranganya and arrested the accused.

That they went to Masangora and collected the suspect to Kehancha police station. That when the suspect was interrogated, he said he had committed the murder. The suspect was wearing a white T- shirt that had blood stains. That the following day they took the suspect to Kehancha Law Courts where Senior Resident Magistrate took the suspects confession.

PW12 arranged for Post mortem which was conducted on 19.6.2023 and it was witnessed by PW12 and PC Tonui. That after post mortem he requested the doctor to draw blood samples to confirm if it matched the blood stains on the white T-shirt and the panga. That upon the exhibits and blood sample being taken for analysis it was established that DNA profile in the blood sample matched the DNA profile generated from the panga recovered in the thicket and the blood stains on the accused person's T-shirt.

PW12 produced Exhibit Memo and the panga as exhibits 6 and 7. He also said he got a report from Government Chemist and which had been produced. He also produced the white Tee shirt Exp 8 and



inventory I prepared on arrest of accused and recovery of Tee shirt is also in court. He produced the inventory as Ex P 9 which was signed by PC James Meba and PC John Meli as well as the accused. That he took the suspect to hospital for mental assessment and after file was forwarded to ODPP it was recommended that charge be preferred. The accused person's blood sample was taken for analysis.

In cross-examination by Ms. Okota Advocate PW12 the Investigating Officer said he was not the arresting officer. He said the accused was arrested and booked at Kehancha police station on 16.6.2023. He said the accused person was not informed of the right to not to give self-incriminating evidence. He said blood sample from the accused was drawn but there is no document in court to confirm the doctor who drew the blood or even the facility. He said he did not have a written consent from the accused to have his blood drawn. He said the accused did not refuse to have his blood samples taken. He said he did not have court order authorizing them to have accused person's blood drawn. He said the accused person's blood was drawn on 19.6.2023 and were at Kehancha hospital until submitted to Government Analyst on 26.6.2023. He said there was no document to show blood samples were at Kehancha hospital and there was nothing else apart from the name of the accused which shows blood samples belonged to deceased.

PW12 further said that Elizabeth Gati was a witness and that he was not aware the accused was tortured while at Masangora police station. He said the confession was not given under duress. He said he was present when the confession was being recorded as he was the one who took the accused before Hon. Karimi. He confirmed that the accused did not have legal representation or even a relative when his confession was taken and when blood sample was taken.

In re-examination PW12 said that blood sample was taken from the accused voluntarily at Kehancha hospital and the blood samples remained at the hospital until on 26.6.2023 when taken to Government Chemist. He said the accused didn't appear like someone tortured when he was collected from the Police Post and he did not raise issue of having been tortured with him or the court. He said the accused was not coerced to confess. He did it willingly.

When the prosecution closed it's case the Accused gave sworn statement and said that prior to his arrest he was working as a mason. He said the deceased Peter Chacha was known to him as he was married to his sister Tabith Mwita. He said that Elizabeth Gati Marwa was also known to him. He said there was a time he married Elizabeth and later he learnt they were related and they stopped the relationship. He said they were in the relationship for one year and 2 months and by the time that the deceased died we had severed relationship for 8 months and I had no grudge with her. He said Elizabeth knew him and could recognize my voice. The accused said that on 14.6.2023 he was arrested. He said that on 14.6.2023 he woke up in the morning and went to work in Kuria East which is Kshs. 250 away. Where the County was building market. He said he arrived at the site at 7.00am and finished constructing the slab at 6.00pm. That when they finished working, they waited to be paid and thereafter used motor bike to go home. The accused said he went with a colleague Samburu Marwa to Taranganya as the motor bike had mechanical problem and arrived at 7.00pm when news was being broadcast. That they took a shower and after having dinner he went to sleep at 9.00pm. He said Marwa's place is along the road and he heard like motor bikes came and stopped nearby. Later he heard the gate being knocked and people entered the compound. That people then entered the room where he was with many torches and told him he was under arrest. That he was handcuffed, arrested and removed from the house and taken to the road where he was told that he had gone into hiding after committing an offence. That one of the officers who went to arrest him was Murumbe and they were in company of a mob. That PW2 Paul Mwita who carried him on the motor bike told him he had killed his brother and went to hide. The accused said that it is Paul Mwita who had taken them from their place of work to Samburu's place.

The accused said that the police officer Irumbe stepped aside with his colleagues and spoke and



then left him at the mercy of members of public who beat him badly. He said there were 2 groups of people, those who wanted to kill him and those who said he should not be beaten. That when Paul confirmed he was the one who took the accused to Samburu's place Lucas - PW3 made phone call to his driver and within 15 minutes probox came and he was placed in the boot and taken to Masangora police post where Murumbe PW8 interrogated him and he told him he had been at his place of work and that it was not the first time he was spending at Samburu's place. That on interrogation he told Murumbe that he did not commit murder. He said there was no one who saw him commit murder. The accused testified further that PW8 ordered him to undress and he remained stark naked and started beating him as he interrogated him. He said it is Murumbe and a group of 12 people who beat him while threatening to kill him. The accused also said that PW3 went to his car and brought a pliers which he used to hold his fingers and squeezing them and because he was in a lot of pain he admitted. He said 3 of his fingers were fractured using a pliers. He said that his testicles were also squeezed using pliers.

The accused said that it was alleged that he killed the deceased because of a woman but it was not true. He said he was not aware Elizabeth had an affair with the deceased. He said he was placed in cells naked while handcuffed. That during the night police vehicle from Kehancha came at around 10.00pm and he was taken to Kehancha police station where the duty officers asked what happened and he told them he had been beaten. That they asked if he knew John Mzee and he said he didn't know him. The next day at 7.00am when tea was brought he was unable to take because of the pains he was experiencing.

That he was removed from the cells while in handcuffs the next day and asked if knew some 2 people who had been removed from other cells and he said he didn't know them. That he was taken to CID where he denied that having killed Obadiah. That when he denied the CID officers started beating him again and asked why he was denying that he committed murder. The accused said he was tortured by Njogu and Tonui after which he was taken to Kehancha court.

The accused contended that at Kehancha he entered a certain room and found the magistrate Karimi and he told her that he had been beaten by a mob and police officers. He said there were 6 people in the room and Njogu gave the magistrate some papers which after reading the Magistrate told him to sign. He said the papers were written from the police station Njogu did not want him to talk when he was taken to the magistrate. That after he left the magistrate's office he was taken to Migori Hospital where Njogu responded to the questions that the doctor asked him. That when the doctor asked what happened to his fingers he said he was beaten but Njogu didn't allow me to say anything. That when he went to Kehancha Njogu again removed him and asked the 2 suspects if they knew me and they denied. That Njogu told them to give Kshs. 20,000 each so that the matter could end. The accused said he didn't give any money because he didn't know what was happening.

That on 16.6.2023 he was taken to Kehancha level 2 hospital by Njogu, Tanui and another where his blood was taken. That when he was arrested he had a white T-shirt and black trouser. He said it was not true that he met PW3 while he was drunk. He said he didn't threaten to kill anyone on the day that the deceased died. He said he was arrested at Samburu Marwa's place in Taranganya and not at his sister's place. The said the deceased was staying in Muturio area which is very far from Taranganya. He said he had not gone to Muturio and it had taken long before he saw the deceased. He said he had no difference with the deceased and he could not kill him

In cross-examination by Ms. Ikol the accused gave his ID 25334088 and said it remained at the station. He said he didn't talk to the magistrate in Kehancha. He said the home of the deceased about 3km away and they usually pay Kshs. 150 to go there by motor bike. He said he had married Elizabeth but they severed the relationship and it was when the deceased was killed that he learnt he had married Elizabeth. He said it was not true that he cut Elizabeth on the left hand. He said he didn't talk to the magistrate and he didn't tell her he cut Elizabeth's hand. He said the



deceased



person's home is approximately 3km but the statement recorded by the magistrate says that the deceased's home is 2km. The accused said he does not drink changaa and he did not know if changaa is sold at Elizabeth's home. He said he did not cut the deceased inside Elizabeth's house. He said he was taken to Kehancha court but he didn't tell the Magistrate that he committed the offence. The accused denied having told the magistrate that he abandoned the murder panga at the scene. He said that what the magistrate signed was written by Njogu. He said that when the magistrate testified he didn't question her. He said that when he stopped the relationship with Elizabeth he had no bad will and it was not true that killed the deceased because he had an affair with Elizabeth. He said it was not true he found Elizabeth and the deceased in bed. The accused alleged it is Njogu and Lucas who recorded what was signed.

The accused also confirmed that he did not tell the magistrate that he had been beaten after being undressed. He said he did not have P3 form to show he was injured. He said he was a class 2 drop out and did not know how to write. He said he thumb printed the documents that Njogu gave the magistrate and the signature on the statement is not his.

In re-examination the accused said that he didn't have an opportunity to get P3 form but he was treated at the prison dispensary. He said he didn't go to the house of the deceased and he didn't cut him. He also denied having abandoned any panga at the scene. He said it is Njogu who recorded what is in the confession statement and he was not given any pen to sign the papers and he didn't talk to the magistrate and he didn't tell her he killed the deceased.

ANALYSIS AND DETERMINATION

The accused, Amos Mwita Chirae, is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code (Cap 63 Laws of Kenya).

To secure a conviction, the prosecution must prove, beyond reasonable doubt, the elements as set out in Section 203 of the Penal Code and clarified in Anthony Ndegwa Ngari v Republic [2014] eKLR and Republic v Andrew Mueche Omwenga [2009] eKLR namely:

1. The fact of death
2. Cause of death;
3. That the death was caused by an unlawful act or omission on the part of the accused (actus reus);
4. That the accused had malice aforethought as defined under section 206 of the Penal Code

On the fact and cause of death, PW5 Dr. Mark Oduor conducted a post-mortem on the deceased, Obadiah Nchagwa Chacha, and confirmed multiple deep cut wounds on the neck, head, and chest which severed the carotid artery and jugular veins, causing massive hemorrhage. The doctor formed the opinion that death was due to excessive bleeding secondary to assault by a sharp object. The medical evidence of PW5 leaves no doubt that the deceased died of multiple deep cut wounds inflicted by a sharp object. This element was conclusively proved.

On whether the death was caused by the accused person there was no direct eyewitness placing the accused at the scene inflicting the fatal injuries. The prosecution case is therefore circumstantial, supported by forensic evidence, confession, and conduct before and after the offence.

PW1 (Elizabeth Gati) testified that she was with the deceased in his house when an assailant entered at 8.00 p.m., his mouth covered, and attacked both her and the deceased with a panga. She sustained cuts and escaped. She later identified the attacker as the accused, though she initially said she did not recognize the voice or face during the attack due to the cover. Her later identification appears to have been based on suspicion and the prior relationship rather than direct recognition.

PW3 (Lucas Rioba) testified that earlier that evening (around 7.00 p.m.) he met the accused at Gokeharaka centre uttering words in Kuria that "leo baeheka" — meaning "today it will be known; I will kill someone or be killed." Later, around 11.00 p.m., he saw the accused about 500 metres from the deceased's home. These statements amount to threatening conduct consistent with premeditation.



PW8 and PW12 confirmed the accused was arrested while hiding at his sister's home the following day.

PW10- Magistrate - recorded a confession by the accused admitting he killed the deceased. Though defence alleged coercion, the magistrate testified that the confession was voluntary, the accused had no visible injuries, and spoke freely.

PW11 the Government Analyst established a forensic link between the accused and the offence as the blood on the panga recovered at the scene matched the DNA profile generated from the blood sample taken from the body of the deceased and the T-shirt worn by the accused had mixed DNA — his own and that of the deceased. This evidence directly connected the accused with both the murder weapon and the deceased.

The accused raised an alibi, claiming he was working as a mason 20 km away and was framed. While the burden of disproving an alibi defense rests with the prosecution, once evidence is adduced placing the accused at the scene, the alibi must fail.

In *Kiarie v Republic* [1984] KLR 739, the Court of Appeal held that an alibi, when raised late in the trial and unsupported by evidence, may not displace strong prosecution evidence.

The accused also alleged he was beaten and coercion by police and the deceased's relatives and tortured into confession. However, no evidence in the form of medical report or independent witness was called to support and / or corroborate the torture allegations. The accused person's confession was recorded before a magistrate who testified as to voluntariness with which it was taken. The alleged violation of the Confession Rules (2016) by the magistrate not recording the presence of a relative or counsel does not automatically render the confession inadmissible if voluntariness is otherwise proved and corroborated, as in *Republic v Musili Tulo* [2014] eKLR.

In this case the forensic DNA evidence, confession, and eyewitness circumstances firmly place the accused at the scene. The alibi is therefore rejected. The DNA evidence remains strong, independent and corroborated the accused person's involvement in the commission of the murder. Thus, the circumstantial evidence, threats uttered by the accused, his presence near the scene on the material night of the murder, subsequent hiding, confession, and DNA findings create a consistent chain pointing unerringly to the accused as the perpetrator and satisfying the test in *Republic v Kipkering arap Koske & Another* (1949) 16 EACA 135 where it was held that that the inculpatory facts must be incompatible with innocence and incapable of explanation upon any other hypothesis than that of guilt.

On whether malice aforethought was proved by the prosecution, under Section 206(a), malice aforethought is established by proof of intention to cause death or grievous harm.

The nature and location of injuries — deep multiple cuts on the neck, head, and thorax severing major blood vessels — demonstrate a deliberate and brutal attack aimed at vital organs.

The accused's earlier utterance, "today it will be known; I will kill or be killed," further reveals premeditation.

Even if the attack was motivated by jealousy arising from his estranged relationship with PW1, that does not negate malice.

In *Republic v Tubere s/o Ochen* [1945] 12 EACA 63 it was held that malice can be inferred from the weapon used, the manner of use, and the part of the body targeted. Thus, malice aforethought is clearly proved.

In consideration of the evidence adduced by the prosecution and the defence this court is of the opinion, that the prosecution has proved all ingredients of the offence of murder beyond reasonable doubt that the death of the deceased was caused by an unlawful act committed by the accused who was actuated with malice aforethought. The accused person's defense of alibi and alleged coercion was unsubstantiated and cannot displace the overwhelming evidence of the prosecution. The accused person is therefore found guilty as charged for the offence of murder under Section 203 as



read with Section 204 of the Penal Code and is convicted accordingly under Section 322(1) of the Criminal Procedure Code.

Order Accordingly.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 13TH DAY OF NOVEMBER, 2025.

SIGNED BY/FOR:
HON. LADY JUSTICE ANNE ONG'INJO



THE JUDICIARY OF KENYA.

MIGORI HIGH COURT

HIGH COURT DIV

DATE: 2025-11-18 16:17:22

