

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE NO. E058 OF 2020

REPUBLIC DPP

V E R S U S

**CLEOPHAS CHIRCHIR KIPCHUMBA 1ST ACCUSED
PERSON**

**VERONICA JEROP KIPCHUMBA 2ND ACCUSED PERSON
(Acquitted)**

**Coram: Before Justice R. Nyakundi
Ms. Kirenge for ODPP
M/s Kaira Nabasenge Advocate for the accused**

JUDGMENT

- 1.** The accused persons were charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on the 19th day of June at Cheburbur village, Moiben Sub-County within Uasin Gishu County murdered Sammy Chirchir Keter.
- 2.** The Accused person in this case was arraigned before this court, pleaded not guilty placing the prosecution to disapprove his innocence as provided for in *Art 50(2)(a)* of the Constitution. The lead counsel for the Prosecution was, Mr. Mark Mugun who was later assisted by Ms. Sidi Kirenge and the accused persons were initially represented by

Learned Counsel Mr. Momanyi who thereafter sought leave to cease acting and, in his place, Mr. Nabasenge was appointed for the accused persons.

3. The prosecution summoned five witnesses to discharge the burden of proof beyond reasonable doubt. In 1876 Thomas Starkie in “**A Practical Treatise of the Law of Evidence**” observed.

“What circumstanced will amount to proof can never be matter of generation definition; On the one hand, absolute, metaphysical and demonstrative certainty is not essential to proof by circumstances. It is sufficient if they produce moral certainty to the exclusion of every reasonable doubt; ... On the other hand, a juror ought not to condemn unless the evidence exclude from his mind all reasonable doubt as to the guilt of the accused, and, as has been well observed, unless he be so convinced by the evidence that he would venture to act upon that conviction in matters of the highest concern and importance to his own interest.....” (See as quoted to in R v Compton (2013) 237 A Crim R 177 at (36))

4. These principles will mirror in evaluation and assessment of the case for the prosecution which incorporates the following evidential material from the five witnesses.
5. **PW1** Mary Kiprono recalled and testified that on 19th June 2020 while at home on or about 2100 hours she heard screams form the neighborhood. She stepped out of the home to the scene, which was a home apparently belonging to his brother by the name Robert. On arrival, the door was locked from inside and that prompted her to go back to her home to seek for more support from Salome and Edna. Further in her testimony PW1 told the court that in company of Salome

and Edna they went back to the same house, made attempts to push the same door but it was still locked from inside. However, through the window of the house they managed to see one Cleophas who is the 1st accused person assaulting the deceased using an electric wire. The second peep revealed to them one Veronica, Victor Kiptoo and Valentine standing up at the same scene and as the deceased was lying on the floor. The incident attracted members of the neighborhood who were curious to find out what was the source of the conflict and the injuries which had been inflicted against the deceased. The door was finally opened and on observation, the deceased had suffered injuries to the head and chest. He was taken to Chebarbar dispensary and later referred to Iten Hospital for further management but he passed on while undergoing treatment. The police were called in to carry out investigations and finally effected an arrest against the accused persons before court.

6. **PW2** - Edna Chepkosgei on oath told this court that on 19th June 2020 while she was at her house, she responded to some screams from the home of one Robert. According to PW2, there were many other people who heard the screams leaving their houses towards the scene and on arrival found the door was locked from inside but through the window she was able to see the deceased lying down seeking help. This caused them to continue raising an alarm for more support from the members of the neighborhood. It was in PW2's testimony that he was able to see the 1st and 2nd accused assaulting the deceased while the 1st accused was armed with an electric wire. This is how the deceased suffered injuries to the head, back, chest and the mouth. He was finally to be taken to Iten Hospital where he succumbed to injuries while undergoing treatment.

7. PW3 Salome Changichi also a witness for the state told the court that on 19th June 2020, she was asked by Edna and Nelly to go and rescue Sammy the deceased who was being assaulted at Robert's homestead. On arrival, at the said homestead PW3 testified that he could hear the screams of the deceased calling for help and saying "*mniokoe msiniue*". In addition, PW3 testified that he saw the 1st accused with an electric wire hitting at the deceased and in his presence was veronica, victor, Ian, Valentine and Godfrey. They were inside the house where the assault of the deceased was taking place as he lay down on the floor of that house. It was the 1st accused who finally opened the door and asked them to take away their person who in this case happened to be the deceased. In the house, PW3 could see streams of blood which he presumed were as a result of the beatings and injuries suffered by the deceased.

8. PW4 Ian Kiptoo also a witness summoned by the state told the court that on 19th June, 2020, he went to the home of Robert to spend a night. In the course of the night PW4 was called by one Victor who informed him that there was someone in the house as he stepped out to answer a call of nature. That is when he saw Victor entering the house armed with a knife but with the minimum source of light from the solar, he was able to make observations as to the surroundings. That is how he happened to see the 1st accused Cleophas whom he identified as his cousin taking away a knife from Victor demanding valentine to open the door to the main house. This incident occasioned fear on PW4 and as he was standing outside the house, he saw the 1st accused pushing the door and finally have it locked from inside. He then saw Cleophas assaulting the deceased while armed with an electric wire. He also used the same knife he had taken away from victor to inflict more bodily harm. He was later to learn that the

deceased had been escorted to the hospital but succumbed to the fatal injuries inflicted by the assailants.

9. Finally, was the evidence of **PW5** – PC Mwaniki whose role in this case was the instructions received to investigate the cause of death of the deceased by the name Samuel Keter. In this assignment, PW5 visited the hospital where he found the deceased in serious health condition, which made him not to record a witness statement at that time. He was able to go through the medical records like the P3 which indicated that he had suffered grievous harm. The victim according to PW5 died soon thereafter and a post mortem was conducted at Moi Teaching and Referral Hospital. The pathologist established that the cause of death was from the stab wounds inflicted on the head back and chest. The Post mortem report and the P3 were produced as evidence in support of the prosecution case.

The defence case

10. The position taken by this court at the close of the prosecution case was that a prima facie case had been established to render the exercise of discretion under section 306 as read with 307 of the CPC to place the accused persons on their defence. With regard to the first accused person he elected to give his own statement where he admitted that the deceased was his uncle essentially a brother to his father. In the accused persons his own testimony on the material day he saw the deceased in the evening and some differences occurred which escalated into a fight. This is after he had accomplished his daily chores of boda boda business he entered the kitchen and started to prepare some food and that is when he saw the deceased with his younger siblings that is Victor, Godfery and Valery. Thereafter he went to his house to sleep only to be awoken by screams from the house of

his mother. He got out of the house went towards the homestead only to be informed there was someone in the house. That person eventually came out and a fight ensued with which one pushing and dragging each other. In the course of that fight members of the public were drawn into it following the screams raging the air. It is through those screams that the accused learnt that the deceased had suffered injuries to the head. He was later to succumb to death after one week.

- 11.** The second accused person testified that the first accused his her own son. And she went on to state that she did not assault the deceased. She only recall that on material day they were taking dinner and the deceased made entry to the house and they shared the evening meal. When done the deceased left for his house, only soon thereafter she had some movements under the bed. She decided to check and saw the likes of a human being which legs she pulled out of that location and screamed at the same time for help. She denied being involved in assaulting the deceased. It was only later she was informed that the legs she pulled out of under the bed were those of the deceased who happens to be his brother in-law.

Analysis and determination

- 12.** The issue this court is called to determine is whether the prosecution has discharged its burden of proof beyond reasonable doubt that each or both accused person(s) murdered the deceased.
- 13.** The core elements to be proven by the prosecution for the court to make a finding of guilty include the following:
 - a. That the deceased has died*
 - b. That his death was unlawfully caused*
 - c. That in causing death, the accused person was actuated with malice aforethought.*

d. That it was the accused person who committed the heinous crime.

14. The Court of Appeal in the case of; **Joseph Githua Njuguna vs Republic (2016) eKLR** addressed the aforesaid ingredients as follows:

“Under section 203 of the Penal Code, any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder. It is clear from this section that there are three elements which the prosecution must prove beyond reasonable doubt to secure a conviction for the offence of murder. These are: (a) the death of the deceased and the cause of that death; (b) that the appellant committed the unlawful act which caused the death of the deceased; (c) and that the appellant had harboured malice aforethought. See Milton Kabulit z& 4 others v Republic [2015] eKLR.”

15. It is trite law that in criminal cases, the burden of proving a crime lies on the prosecution to prove the ingredients of the charge beyond reasonable doubt. This is explicitly set forth in the provisions sections 107, 108 and 109 of the Evidence Act on proof of the existence or otherwise of particular facts in relation to the offence under consideration. The burden remains on the prosecution throughout the trial. As Lord Sankey articulated in **Woolmington v DPP (1935) AC 462:**

“Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt...No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law...”

- 16.** The Supreme Court of Nigeria in **Bakare vs State (1985) 2 NWLR** spoke as follows on the question of burden of proof:

“Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption, the evidence of the prosecution must prove beyond reasonable doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure, including the administration of criminal justice. Proof beyond reasonable doubt means just what it says, not admit of plausible possibilities and fanciful possibilities but it does admit a high degree of cogency consistent with an equally high degree of probability.”

- 17.** Starting with the first issue, the evidence establishes that the death of Sammy Chirchir Kete June 2020 at Cheburbur village, Moiben Sub-County. PW1 Mary Kiprono testified that following screams from the neighborhood, she discovered the deceased at Robert's homestead suffering from injuries to the head and chest. PW2 Edna Chepkosgei corroborated this evidence, stating that she found the deceased lying down seeking help with injuries to the head, back, chest and mouth. PW3 Salome Changichi similarly testified to finding the deceased in a distressed state with visible streams of blood in the house. The cause of death was established through the evidence of PW5 PC Mwaniki, who investigated the matter and reviewed the medical records including the P3 form which indicated that the deceased had suffered grievous harm. A post mortem was conducted at Moi Teaching and Referral Hospital where the pathologist determined that the cause of death was from stab wounds inflicted on the head, back and chest. The post mortem report was produced as evidence in support of the prosecution case. the prosecution did not challenge this element and

therefore this court finds that the prosecution has proved beyond reasonable doubt that the death of Sammy Chirchir Keter occurred and that it was caused by fatal injuries including stab wounds to vital parts of his body.

- 18.** The second element is whether the death was unlawfully caused. The law presumes every homicide to be unlawful unless it occurs as a result of an accident or is one authorized by law. See **Guzambizi Wesonga Vs Republic [1948] 15 EACA 65** where the court held:

“Every homicide is presumed to be unlawful except where circumstances make it excusable or where it has been authorized by law. For a homicide to be excusable, it must have been caused under justifiable circumstances for example in self defence or in defence of property.”

- 19.** In this case, the medical evidence reveals no circumstances that would amount to excusable homicide. The pathologist's findings show that the deceased died from deliberate stab wounds inflicted with sufficient force to cause fatal injuries to the head, back and chest. The nature and location of these injuries, combined with the evidence of assault using an electric wire and knife as witnessed by multiple prosecution witnesses, clearly indicates this was not an accidental death or one caused in self-defense.
- 20.** The evidence shows the deceased was found lying on the floor of the house having been deliberately assaulted by the accused persons. There is no suggestion that the deceased posed any threat that would justify the use of force against him. The circumstances surrounding his death, including being locked inside the house during the assault and the severity of the injuries inflicted, demonstrate that this was an intentional and unlawful killing.

- 21.** Accordingly, this court finds that the prosecution has proved beyond reasonable doubt that the death of Sammy Chirchir Keter was unlawful.
- 22.** The next element is on whether it is the accused persons who committed the offence. The prosecution must prove that it was the accused persons who committed the unlawful acts that caused the death of the deceased. This element requires careful examination of the witness testimony and evidence linking the accused to the commission of the offense.
- 23.** PW1 Mary Kiprono provided crucial eyewitness testimony that through the window of the house, she observed the 1st accused Cleophas assaulting the deceased using an electric wire. PW2 Edna Chepkosgei corroborated this evidence, testifying that she was able to see the 1st accused assaulting the deceased while armed with an electric wire. PW3 Salome Changichi provided additional corroborative evidence, testifying that she saw the 1st accused with an electric wire hitting the deceased. The deceased's cries for help saying "mniokoe msiniue" as testified by PW3 demonstrate his awareness of the deadly nature of the attack.
- 24.** PW4 Ian Kiptoo provided particularly damaging evidence, testifying that he saw the 1st accused Cleophas taking away a knife from one Victor and later observed Cleophas assaulting the deceased while armed with an electric wire. Crucially, he testified that the 1st accused used the same knife he had taken from Victor to inflict additional bodily harm on the deceased. This evidence establishes that the 1st accused was not only present at the scene but was the primary perpetrator using multiple deadly weapons.
- 25.** The consistency of the prosecution witnesses' testimony regarding the active participation of the 1st accused in the fatal assault is remarkable. All witnesses identified him as the main aggressor wielding both the

electric wire and knife that caused the fatal injuries. The defense of the 1st accused, while admitting that a fight occurred with the deceased, fails to adequately explain the severity of the injuries inflicted or provide a credible alternative version of events.

- 26.** Therefore, this court finds that the prosecution has proved beyond reasonable doubt that the 1st accused committed the unlawful acts that caused the death of Sammy Chirchir Keter.
- 27.** Regarding the 2nd accused person, the evidence regarding the 2nd accused's role in causing the death requires more careful scrutiny. While the prosecution witnesses place her at the scene, their testimony regarding her active participation in the fatal assault is notably weak and lacks specificity for a murder conviction.
- 28.** PW1 Mary Kiprono testified that she saw one Veronica, Victor Kiptoo and Valentine standing up at the same scene while the deceased was lying on the floor. Significantly, she described the 2nd accused as "standing" rather than actively participating in the assault. PW2 Edna Chepkosgei made a general statement that she "was able to see the 1st and 2nd accused assaulting the deceased" but provided no specific details about what exactly the 2nd accused was doing to cause the death. PW3 Salome Changichi testified that "in his presence was veronica, victor, lan, Valentine and Godfrey" but again describes her as being "present" rather than actively participating in the fatal assault.
- 29.** The 2nd accused's own testimony that she did not assault the deceased and only recalled pulling legs from under the bed without knowing they belonged to the deceased, while perhaps lacking credibility regarding her knowledge of the person's identity, does not necessarily establish that she caused the death.
- 30.** For the 2nd accused to be convicted of murder, the prosecution must prove either that she directly participated in the fatal assault or that

she aided and abetted the 1st accused with knowledge of his murderous intent. Mere presence at the scene, even with knowledge of what was occurring, is insufficient without clear evidence of active participation or encouragement in the acts that caused death.

- 31.** The evidence consistently shows the 1st accused as the primary and active aggressor wielding the deadly weapons, while the 2nd accused appears to have been largely a passive observer. The prosecution has failed to establish beyond reasonable doubt that the 2nd accused performed any specific act that directly contributed to causing the death of the deceased.
- 32.** Therefore, this court finds that the evidence against the 2nd accused is insufficient to prove beyond reasonable doubt that she committed the unlawful acts that caused the death of Sammy Chirchir Keter.
- 33.** The final element that needs consideration is that of malice aforethought. **Section 206** of the Penal Code defines malice aforethought as being established by evidence proving an intention to cause death or grievous harm to any person, or knowledge that the act causing death will probably cause death or grievous harm, or an intent to commit a felony, or an intention to facilitate escape from custody.
- 34.** Malice aforethought can be established expressly or by inferences to be drawn from the facts and circumstances before Court. The East African Court of Appeal explicated the circumstances in which malice aforethought can be inferred in the case of **Republic vs. Tubere s/o Ochen [1945] 12 EACA 63** as follows: -
 - a. The nature of the weapon used; whether lethal or not;*
 - b. The part of the body targeted; whether vulnerable or not;*
 - c. The manner in which the weapon is used; whether repeatedly or not;*

d. The conduct of the accused before, during and after the attack.”

- 35.** The evidence establishes malice aforethought on the part of the 1st accused through several compelling factors. The nature of the weapons used demonstrates deliberate intent to cause serious harm. The 1st accused armed himself with both an electric wire and a knife, weapons capable of inflicting fatal injuries. The systematic use of multiple weapons against the deceased shows a calculated intent to cause maximum harm.
- 36.** The parts of the body targeted reveal malicious intent. The medical evidence shows fatal stab wounds to the head, back and chest; all vulnerable areas where injuries are likely to prove fatal. The deliberate targeting of these vital areas by the 1st accused demonstrates clear intention to cause death or grievous bodily harm.
- 37.** The manner in which the assault was conducted evidences premeditation and malice. The 1st accused participated in locking the door from inside to prevent interference, trapped the deceased inside the house, and conducted a sustained assault using deadly weapons. Despite the deceased's pleas for mercy evidenced by his cries "mniokoe msiniue," the 1st accused persisted in his attack until fatal injuries were inflicted.
- 38.** The severity and nature of the injuries documented in the post mortem examination provide compelling evidence of malice aforethought. Accordingly, this court finds that the prosecution has proved beyond reasonable doubt that the 1st accused acted with malice aforethought in causing the death of Sammy Chirchir Keter.
- 39.** In the end, this court finds the 1st accused guilty of murder contrary to sections 203 and 204 of the Penal Code and convicts him accordingly. The 2nd accused is hereby acquitted of the charge of murder for lack of

sufficient evidence and should be released unless and otherwise lawfully held.

40. Orders accordingly.

RULING ON SENTENCE

41. The accused person herein was convicted for the offence of murder contrary to section to Section 203 as read with Section 204 of the Penal Code vide this court's Judgment dated 18th July, 2025.

42. Before imposing an appropriate sentence, this court invited the accused person to mitigate in which he highlighted that he is 28 years old and that he was in custody before he was released on bond. He further submitted that he is remorseful and regrets the offence.

43. The prosecution on the other hand urged the court to consider the gravity of the offence together with the aggravating factors surrounding the offence and impose an appropriate custodial sentence.

44. The offence of murder has its sentence spelt out under **Section 204 of the Penal Code**. As regards the sentence to be imposed, the Court of Appeal in the case of **Charo Ngumbao Gugudu Vs. R [2011] eKLR** held as follows:

"Further, the law is that sentence is imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that it is not proper exercise for the court to fail to look at the facts and circumstances of the case in their entirety before settling for any given sentence. See Ambani Vs R [1990] eKLR."

45. In **Veen v. The Queen (No. 2) (1988) 164 CLR 465**, it was stated:

"Sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of

punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case."

46. The court is equally guided by the fundamental purposes of sentencing as provided for in the sentencing policy guidelines of the Judiciary, 2023 which can be pursued by the court in applying one or more of the following eight objectives:

"(a) Age of the offender;

(b) Being a first offender;

(c) Whether the offender pleaded guilty;

(d) Character and record of the offender;

(e) Commission of the offence in response to gender-based violence;

(f) The manner in which the offence was committed on the victim;

(g) The physical and psychological effect of the offence on the victim's family;

(h) Remorsefulness of the offender;

(i) The possibility of reform and social re-adaptation of the offender;

(j) Any other factor that the Court considers relevant."

47. The court is equally guided by the fundamental purposes of sentencing as provided for in the sentencing policy guidelines of the Judiciary, 2023 which can be pursued by the court in applying one or more of the following eight objectives:

- a. *“Retribution: to punish the offender for his/her criminal conduct in a just manner.*
- b. *Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.*
- c. *Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.*
- d. *Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.*
- e. *Community protection: to protect the community by incapacitating the offender.*
- f. *Denunciation: to communicate the community’s condemnation of the criminal conduct.*
- g. *Reconciliation: To mend the relationship between the offender, the victim and the community.*
- h. *Reintegration: To facilitate the re-entry of the offender into the society.”*

48. The Supreme Court in ***Francis Karioko Muruatetu & Another v Republic [2017] eKLR*** declared the mandatory death sentence for murder unconstitutional and provided guidelines for courts to consider when determining appropriate sentences in murder cases. These factors include:

“(a) Age of the offender;

- (b) Being a first offender;
- (c) *Whether the offender pleaded guilty;*
- (d) *Character and record of the offender;*
- (e) Commission of the offence in response to gender-based violence;
- (f) The manner in which the offence was committed on the victim;
- (g) *The physical and psychological effect of the offence on the victim's family;*
- (h) Remorsefulness of the offender;
- (i) The possibility of reform and social re-adaptation of the offender;
- (j) *Any other factor that the Court considers relevant.*

ix. These guidelines will be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They will also apply to sentences imposed under Section 204 of the Penal Code before the decision in Muruatetu.”

49. In determining an appropriate sentence, this court must carefully balance the aggravating and mitigating factors present in this case. The Constitutional Court of South Africa in **State v. Makwanyane (1995) CCT/3/94** provided guidance on this balancing exercise, stating that:

“mitigating and aggravating circumstances must be identified by the court, bearing in mind that the onus is on the state to prove beyond reasonable doubt the existence of aggravating factors,

and to negative beyond reasonable doubt the presence of any mitigating factors relied on by the accused. Due regard must be paid to the personal circumstances and subjective factors that might have influenced the accused person's conduct, and these factors must then be weighed with the main objectives of punishment, which have been held to be: deterrence, prevention, reformation and retribution. In this process any relevant considerations should receive the most scrupulous care and reasoned attention, and the death sentence should only be imposed in the most exceptional cases, where there is no reasonable prospect of reformation and the objects of punishment would not be properly achieved by any other sentence."

- 50.** In coming up with an appropriate sentence, I have also had to consider Art. 50(2)(e) of *the Constitution* which provides that an accused person has a right to a fair trial which includes the right to have the trial begin and conclude without unreasonable delay.
- 51.** The present case has been pending before this court since the accused person was charged on 10th October 2020. This means that from the date of charge to the date of this judgment, a period of approximately five (5) years has elapsed. While some of this delay can be attributed to the normal pace of criminal proceedings and the complexity inherent in murder trials, the court is alive to the profound impact that such prolonged proceedings have had on the accused person's life.
- 52.** During this extended period, the accused person has lived under the shadow of a murder charge, a reality that inevitably suspends one's normal life. The uncertainty of outcome, the repeated court appearances, the psychological burden of facing a capital charge, and

the social stigma associated with such proceedings all contribute to a form of punishment that precedes any formal sentence imposed by this court. This is not to diminish the gravity of the offence or the suffering of the victim's family, but rather to acknowledge a constitutional reality that must inform the sentencing process.

53. The Court of Appeal in **Julius Kamau Mbugua v Republic** [2010] eKLR observed that:

“...the right to a trial within a reasonable time guaranteed by Section 77(2) is trial - related. It is related to the trial process itself and is mainly designed to ensure that the accused person does not suffer from prolonged uncertainty or anxiety about his fate. The duty is mainly on the court which has the control of the trial to ensure that the right to speedy trial is observed.”

54. Article 50(2)(e) of the Constitution embodies a fundamental recognition that justice delayed can itself become a form of injustice, even where guilt has been established. The accused person before me is now 28 years old. He was 23 years when the events giving rise to this charge occurred. A significant portion of his youth has been consumed by these proceedings.

55. The Supreme Court in the case of **Waswa vs. Republic (Petition 23 of 2019) [2020] KESC 23(KLR)** (4 September 2020) stated as follows regarding the requirement for a speedy:

“83. Article 14(3)(c) of the ICCPR entitles an accused person, as a minimum guarantee to be “tried without undue delay”. The Human Rights Committee, in General Comment No. 32, article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32, has explained that the right of the accused to be tried without undue delay, provided for by

Article 14(3)(c), is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice. The General Comment further states that what is reasonable has to be assessed in the circumstances of each case.

84.The benefits of an expeditious trial cannot be gainsaid. A speedy trial ensures that the rights of the accused person are secured; it minimizes the anxiety and concern of the accused; it prevents oppressive incarceration; and it protects the reputation, social and economic interests of the accused from the damage which flows from a pending charge. It also protects the interests of the public, including victims and witnesses, and ensures the effective utilization of resources. Additionally, it lessens the length of the periods of anxiety for victims, witnesses, and their families and increases public trust and confidence in the justice system.

- 56.** In conformity with the Constitution, courts must shun situations where an accused person's right to a fair trial is prejudiced by virtue of undue delay. The prolonged pendency of this matter, spanning five years from charge to judgment, represents a significant period during which the accused person's life has remained in limbo. While he was granted bond and therefore not continuously incarcerated, the weight of a murder charge hanging over one's head for such an extended period cannot be understated. It affects one's ability to plan for the future, to maintain employment, to sustain relationships, and to participate fully

in society. The accused person has had to live with the knowledge that his liberty, indeed his very life, hung in the balance throughout these proceedings.

- 57.** This court takes judicial notice of the fact that in our society, a person facing a murder charge is often stigmatized and ostracized, regardless of the eventual outcome of the trial. The accused person has borne this stigma for five years. His boda boda business, by which he earned his livelihood, has likely been affected. His social standing in the community has undoubtedly been compromised. These are consequences that flow not from the conviction itself, but from the mere pendency of the charge, consequences that the constitutional guarantee of a speedy trial is designed to minimize.
- 58.** In applying the guidelines set out in **Francis Karioko Muruatetu & Another v Republic [2017] eKLR**, I have carefully considered each of the prescribed factors as they relate to the accused person. The accused is 28 years old, was 23 at the time of the offence, and is a first offender with no prior criminal record. He pleaded not guilty and exercised his constitutional right to put the prosecution to proof. However, the manner in which the offence was committed; the brutal sustained assault using multiple weapons, the targeting of vital organs, the trapping of the deceased in a locked house despite his cries for mercy constitutes a severe aggravating factor. The physical and psychological effect on the victim's family has been profound and enduring. The accused has expressed remorse through counsel, and being young with demonstrated capacity for honest work, he shows reasonable potential for reform and social re-adaptation. The five-year delay in these proceedings is also a relevant consideration under the principle of fair trial within reasonable time.

- 59.** Murder is an offence that strikes at the very foundation of civilized society. The right to life, enshrined in Article 26 of the Constitution, is the most fundamental of all rights. Without life, no other rights can be enjoyed. When one person unlawfully takes the life of another, they commit an act that demands the strongest condemnation. The sentence imposed must send a clear message that human life is sacred and that those who take life unlawfully will face serious consequences.
- 60.** At the same time, this court is mindful that following the Supreme Court's decision in *Muruatetu*, sentencing for murder must be individualized. Each case must be assessed on its own facts and circumstances. Each offender must be considered as an individual human being with their own history, character, and potential. The days of mandatory death sentences are behind us, precisely because the Supreme Court recognized that even in cases of murder, there must be room for consideration of mitigating circumstances.
- 61.** *Punishment must fit the criminal, as well as the crime, be fair to society and be blended with a measure of mercy and when sentencing an accused, a court is required to consider the four objectives of punishment (deterrence, prevention rehabilitation and retribution) in view of the trial of factors as set out in S v Zinn. The triad of factors being (a) the personal circumstances of the offender, including his character conduct in life and personally, and everything that influenced the commission of the offence, (b) the nature and seriousness of the offence committed and (c) the interests of the community, including the necessity for a level of uniformity in sentencing.*
- 62.** Accordingly, I hereby sentence the accused person, **CLEOPHAS CHIRCHIR KIPCHUMBA**, to **eighteen (18) years' imprisonment** for the offence of murder contrary to sections 203 and 204 of the Penal

Code. This sentence shall run from **7th October 2020**, being the date when the accused person was first taken into custody following his arrest and charge.

DATED AND SIGNED AT ELDORET THIS 5TH DAY OF NOVEMBER, 2025

.....
R. NYAKUNDI
JUDGE