

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. E027 OF 2020

REPUBLIC

.....**PROSECUTOR**

VERSUS

ARNOLD KIPLANGAT ROTICH

.....**ACCUSED**

JUDGMENT

1. **Arnold Kiplangat Rotich** herein referred to as the accused stands charged with the offence of Murder contrary to section 203 as read with section 204 of the penal code. The particulars being that the accused on the 6th September, 2020 at Wakarimu location, Rongai within Nakuru county, murdered Winnie Jebiwott.
2. The accused denied the charge and the case proceeded to full hearing. The prosecution called a total of ten (10) witnesses save for PW2 who never appeared for cross examination after being stood down following a request by the prosecution.
3. PW1 **Teda Kandie** testified that the accused whom he knew as Arnold Kiplangat came to their home near Kalyet on 5th September, 2020. She said she had lived with the accused

when he was schooling but he later went to his home. On that day they had supper and he went to sleep and on the next day they had breakfast. Her husband who was going to town left with the accused. The deceased left for Sunday school while her daughter Nancy Chepchirchir was left at home as she left for her aunt's funeral.

4. Her husband called her at about 2pm and told her the deceased was bleeding in the house. She informed people and she returned home and found her husband together with police officers there. She found the deceased lying at the door with blood all over the place. They also found a knife, a metal bar and a stone there. The knife and metal bar, and the deceased's t-shirt were blood stained. She read the letter found under the mattress. She identified the knives (EXB 1 and 2), a T-shirt (EXB 3).
5. PW3 - **Dr. Titus Ngulungu** the pathologist did the post-mortem on the deceased's body. He said the deceased had injury bruises, slash wounds on the back of the head, severe injury on the neck and vessels were cut. The cause of death was massive blood loss, head injury due to sharp trauma to the back of the head. The post mortem report was produced as EXB 5.
6. PW4 **Emily Yegor** a village elder stated that on 6/9/2022 at 2pm she was notified of the incident by a neighbor and she informed the chief who came with police officers. She entered the house and saw the body of the deceased.

7. PW5 **Polycap Kweyu** who works for the Kisumu government chemist said on 2/12/2020 they received the following items:
- Blood samples of the deceased
 - Somali sword
 - Red white sleeves T-shirts (Arsenal)
 - Metallic bar. He did an analysis and his findings were as follows:
 - Sword stained with blood of human origin.
 - T/shirt had blood stains of a human being.
 - Metallic had no stains of blood.
8. He generated DNA profiles in computing these and he concluded that:
- The DNA profiles generated on the sword, matches with the deceased. The DNA profiles from the T-shirt was mixed, partial and inclusive DNA profile for unknown male persons. No DNA profile was profile generated from the metallic bar. He produced the report dated 19/1/2022 as Exb 6a and Exhibit Memo Exb 6b.
9. In cross examination he confirmed that besides the blood sample of the deceased there was no other blood sample received.
10. PW6 **David Kamau** is the senior chief Rongai. He said on 6/9/2020 at around 2pm he received a call from a neighbor Joel Kiprotich who told him of the murder of the deceased. He went to the scene and confirmed the report. The body lay in a pool of blood and it had a deep cut on the shoulders.

Next to the body was a sword and tyre lever and a sharp knife. He called the police who came, and on searching the place, they found black worn out shoes of Brian Kiplangat. They also found a note written in a red pen dated 5/9/2020. The red pen was also received. He had not seen Brian Kipangat before.

11.PW7 **Anne Chepkosgei** from Makarimi is a neighbor to the deceased's father. She said he called her on 6/9/2022 at 2pm and requested her to check on his child who was heavily bleeding at his house. She went to the house and found the deceased lying down in a pool of blood with a sweater in her hands and she wore white shoes. On noticing all this she went back to her house and called her husband and visitor and they all came back to the neighbour's house. She said she had never seen the accused before his arrest nor at the scene.

12.PW8 - **Stanely Kiptoo** a teacher at Koresoi secondary school was the deceased's father. He identified the body for post mortem on 8/9/2020. He explained that PW1 is his sister who lived with the deceased. PW1's husband (Joel Mwarusoi) was now deceased.

13.PW9 - **No 237797 C.I Harrison Kalimbo Zimi** testified that in 2021 he was attached at DCIO Rongai. On 6/9/2020 14.30 hrs he received a call from the DCIO (Dorcas) and OCPD Mr. Rotich of Rongai who told him of a murder scene a few meters from Simba Cement Salgaa. He went to the

scene and found the deceased lying in a pool of blood not far from where she lived. He recovered a metal rod, somali sword, red T-shirt, a bundle of confession letters under a mattress in one of the rooms.

14. He got the number of the suspect which was used to trace him. A post mortem was done on 8th September, 2020 by Dr. Ngulungu. The suspect was hiding in Kamwingi 2 of Kericho where he lived with his mother. He was arrested and first arraigned in court on 21/10/2022. The letters recovered were taken to the Document Examiner for examination, and the result was positive. He produced the following as exhibits.

- Somali sword - EXB 1
- Exhibit Memo for letters EXB 6b
- Metal bar/Tyre Level 8 - Exb 2
- Red T-shirt - EXB 3

He referred to the following:

- Bundle of confession letters (MFI - 7)
- Report by Document Examiner later produced by PW10 as EXB 6a.

15. In cross examination he admitted that EXB 1- 3 were never dusted for finger prints. Further that the photos of the scene were not availed in court. He acknowledged that the names in the confession letters were Brian Kiplangat Taita while those in the charge sheet were Arnold Kiplangat Rotich.

16. PW10 - **No. 24251 I. P. Eli John Mwangi** is a forensic examiner, with 9 years experience, and attached to the

Forensic Document Examination section. He holds a bachelor of science degree and has trained and has been certified as a Forensic document examiner at Regional Forensic Laboratories in Sudan and the Foster and Freeman Equipment Systems in the United Kingdom.

17. He testified that on 17/6/2021 the office received the following documents from DCI Rongai under the escort of Sgt. Patrick Oyalo. These are:

- 3 documents which are the questioned writings
- Specimen writing of the accused
- The documents were accompanied by an Exhibit Memo Form with a request for them to ascertain whether the writing on the questioned document and the specimen writing were by the same author.
- Upon examination and comparison he found that the documents were by the same author. He produced the report as EXB 6a and the Exhibit Memo as EXB 6b.

18. In cross examination he said in examination and comparison they use the questioned document and the specimen. He said age and intoxication can affect one's writing. He did not see the suspect and neither did they interact with the investigating officer to get the facts of the case. He explained that after doing the findings the report is forwarded to the Quality Assurance Team for review and if any errors are detected the exercise is repeated but by a different Examiner.

19. When placed on his defence the accused elected to give sworn evidence. He said he was born on 29/6/2004 and produced his birth certificate (D. EXB 1). He was thus 16 years old at the time of his arrest. He testified that on 5/9/2020 he went to visit his father Joel Kiprotich Marsoi at Wakarimu area. That he used to do so whenever they closed school. Apparently, the accused lived with his mother in Teres village Londiani. He said he was well received by the dad, step sister Banzie Chepchichir and his cousin. His step mum (PW1) later arrived and also received him, and they had supper together. He went and slept in the room in the kitchen outside the main house.

20. He further stated that the next day he asked his dad to release him to go and assist his mother on the farm. The dad escorted him to the stage and gave him Ksh 1,000/= for fare and pocket money. He arrived at the Londiani junction at 10.00am and walked home arriving at 12noon, and had lunch at 1.00pm. On 10/9/2020 his father called him and told him an incident had occurred and he was required at his home at Salgaa. He organized and walked to the stage at Londiani junction from where he was arrested. He denied knowledge of the letter he referred to as EXB 10. He said no witness saw him after boarding the vehicle. Further that his fingerprints were taken but no report on them was produced.

21. Upon cross examination he said he was now 21 years old and he lived with his mother in Cheres while his father lived

with his step mother (PW1) in Wakarimu Salgaa and they paid his school fees. He had gone to see his father who had been sick in August, 2020. He denied meeting the deceased when he visited the father. He said he had a good relationship with his father and PW1.

22. The prosecution relied on its submissions filed at the case to answer stage. The same are dated 28th March, 2025 having been filed by M/s Emma Okok Principal prosecution counsel. In the said submissions counsel did a summary of the evidence by the prosecution witnesses, and submitted that all the three ingredients required for the proof of a charge of murder had been fulfilled. She referred to the “confession letters” in which the accused indicated how he entered into the house and how he’d kill anyone except his father. Further that he got the sword under the bed of his father. That PW1 identified the sword as belonging to her husband. She submitted that it was this sword that the accused used to cause injuries on the deceased, leading to her death.
23. Referring to Section 206 of the penal code she submitted that the accused had an intention of killing the deceased. This is because he assaulted her using a sword causing her injuries on the head, shoulder and neck. The said injuries eventually led to the deceased’s death.
- 24.** The accused’s submissions were filed by Mr. Bore K. Peters advocate and are dated 15th August, 2025. Counsel submitted that the prosecution case was founded on

circumstantial evidence. That the said evidence did not meet the laid down principles in the case of **Abanga alias Onyango v Republic Criminal Appeal No. 32 of 1990 (UR)**.

25. It is his further submission that the chain of the circumstantial evidence was broken in that none of the witnesses placed the accused at the scene at the material time, as there was no eye witness. Referring to the evidence of PW1 he argued that the accused left PW1's home on 6/9/2020 after being given Ksh.1,000/= as bus fare by the father, and he boarded a bus but long before the deceased was found dead in the afternoon. It is his submission that any other person could have sneaked into PW1's house and killed the deceased.
26. To support this counsel relied on the case of **People of the Philippines, plaintiff - appellate v Elever Jaen Y. Morante, Accused - appellant [G.R. No. 241946, July 29, 2019]** where the Supreme court of Philippines held;
"To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of

*circumstances duly proved must be consistent with one other and that each and every circumstance must be consistent with accused's guilt and inconsistent with his innocence. The circumstances must be proved, and not themselves presumed. **The circumstances must be proved, and not themselves presumed. The circumstantial evidence must exclude the possibility that some other person has committed the offense.***

27. Counsel referred to the evidence of PW1 - PW10 and submitted that the same were full of contradictions and inconsistencies. He referred to the case of **Ndungu Kimani v Republic [1979] eKLR** as cited with approval in **Boniface Gubimilu v Republic [2020] eKLR** in which the Court of Appeal observed as follows:

"...The witness in a criminal case upon whose evidence is proposed to rely (sic) should not create an impression in the mind of the court that he is not a straight forward person or raises a suspicion about trustworthiness, or do (or any) something which indicates that he is a person of doubtful integrity and therefore unreliable inordinate witness which makes it unsafe to accept the evidence."

28. He also referred to the case of **Republic v Abdulrahman Hamisi HABO 2021 eKLR** where it was held:

“...the lower court having established that she lied in relation to her prior relationship with the accused or her knowledge of him, ought to have been extra careful in relying on her uncorroborated evidence to arrive at a conviction. The court should as well have recorded with precision reasons in the proceedings which satisfied it that her other evidence is true. Such having not been recorded, there exists possibility where the complainant could have lied about the real culprit. The doubt should have been resolved in his favour. As such I do find that the trial court erred in convicting the appellant of a more severe offence than the one he was charged with, and depended to arrive at a conviction on unreliable and uncorroborated evidence of the complainant.”

29. Counsel referred to handwriting samples and the resultant Document Examiner’s report (Exhibit 6a). He argued that no authority had been obtained before they were extracted. To him this was a violation of the accused’s right to a fair trial under Article 50(2) (i) of the Constitution of Kenya 2010. He argued that this was self-incrimination. On this he referred to the case of **Republic v Mark Lloyd Stevenson [2016] eKLR** where Joel Ngugi J (as he then was) held that:

“The privilege protects not only against compelled confessions but also against the compelled production of documents, writings or acts by an accused person which may expose him to criminal liability. What is

excluded is not merely the contents of such material, but the act of producing them when compelled by investigative authorities. Where evidence is obtained from the accused himself in response to questioning, or through coercion, it is inadmissible as it infringes Article 50(2) (I)."

30. He further argued that the act of obtaining the specimen writings from the accused without authority amounted to coercion and oppression in defiance of the will of the accused. He urged the court to expunge the specimen writing and the Examiner's Report (Exhibit 6a) from the record. Counsel also submitted that the prosecution case was hinged on mere suspicion which was not supported by evidence. Reference was made to the case of **Sawe V Republic [2003] KLR 364**.
31. Finally, he referred to the defence of the accused person and submitted that:
- There is no direct or credible evidence linking the accused to the offence.
 - The circumstantial evidence adduced does not meet the threshold in **Abanga v Republic case** (supra)
 - The purported confession letters are inadmissible and unreliable.
 - The forensic evidence exonerates rather than implicates the accused.

He thus urged the court to acquit the accused under Section 215 of the Criminal Procedure Code.

Analysis & determination

32. I have carefully considered the charge, the evidence on record, the submissions by both counsel, and the law. The main issue for determination is whether the prosecution has proved its case of murder against the accused beyond reasonable doubt. Section 203 of the Penal Code defines the offence of murder as follows;

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

33. To prove the said offence, the following ingredients must be met;
- a) The occurrence of the death of the deceased and the cause of the death.
 - b) That the accused’s unlawful act caused the deceased’s death.
 - c) That the accused had malice aforethought while committing the unlawful act.

The death & cause of death

34. From the evidence of the prosecution witnesses (PW1 – PW4, PW6-PW9) there is no dispute about the death of the deceased. These witnesses saw her dead body. They also observed some injuries on her and said the body lay in a pool of blood.

35. Dr Ngulungu Titus who testified as PW3 conducted the post mortem on the deceased's body on 8th September, 2020 at 12.30 p.m. The body was identified by Dorine Jepchirchir and Stanley Kiptoo (PW8). He found the body to have had injuries, slash wounds, cut vessels & bruises. The cause of death was massive blood loss, head injuries due to sharp trauma to the back of the head. The deceased's age was 12 years.

From the above it is clear that the deceased did not die out of a natural cause.

Whether the unlawful act leading to the cause of death was by accused

36. There was no person who witnessed the accused commit this offence. The evidence presented is purely circumstantial which must be keenly examined by this court. Circumstantial evidence has been defined as follows in several decisions;

37. In **Sawe V Republic [2003] KLR** the Court of Appeal held as follows;

1. In order to justify on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

2. *Circumstantial evidence could be a basis of a conviction only if there was no other existing circumstances weakening the chain of circumstances relied on.*

38. Further in **Nzivo v Republic [2005] 1 KLR 699** the Court of Appeal stated:

“In a case dependent on circumstantial evidence in order to justify the inference of guilt the incriminating facts must be incompatible with the innocence of the accused or the guilt of any other person and incapable of explanation upon any other reasonable hypothesis than that of his guilt. It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure that there are no other coexisting circumstances which would weaken or destroy the inference”

39. Where as in **Wambua & 3 others V Republic [2008] KLR 142** the said court held:

1. In order to justify an inference of guilt from circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. The burden of proving facts which justify the drawing of this inference is always on the prosecution which is required to establish its case beyond reasonable doubt.

- 2. It is also necessary, before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.*
40. In handling circumstantial evidence, the court must pay attention to the following principles laid down in the case of **Abanga alias Onyango v Republic Criminal Appeal No. 32 of 1990 (UR)** namely:
- (i) The circumstances must be cogently and firmly established.
 - (ii) They must point irresistibly to the guilt of the accused.
 - (iii) They must form a chain so complete as to have no escape from the conclusion that within all human probability the crime was committed by the accused.
41. With the above principles in mind this court now moves to examine the evidence on record. There is no dispute that the accused came to PW1's home on 5th September, 2020 evening to see his father. The accused in his defence confirmed the same.
42. PW1 is not the biological mother of the deceased. Her biological mother is a sister to PW1 who was living with the child. It is the deceased's father (PW8) who gave the court this information. It was also through PW8 that the court learnt that PW1's husband Joel Mwarusoi who was also the

accused's father passed away. It is not clear when he passed away since PW1 never informed the court about it. It is however clear that the late Joel Mwarusoi did not testify, in this case.

43. It was PW1's evidence that on the morning of 6th September, 2020 she left home for her aunt's funeral, while the deceased left for Sunday school. She also left her daughter Nancy Chepchirchir at home. She did not tell the court who else she left behind. She was later called by her late husband and informed of what he had found. When she arrived, she found the deceased lying at the door in a pool of blood. When PW9 an officer then attached to DCIO office Rongai and who was the investigation officer went to the scene he found the deceased lying in a pool of blood facing down not far from where she lived.
44. The question now is, where was the deceased's body found? PW9 the officer from the DCIO's office said it was not far from where she lived. So where was this? On cross-examination he said he could not tell whether the scene had been interfered with and so where was the exact scene? The deceased had been to the Sunday school. When did she come back from there? Did the murder occur in the house, near the house or at the door of the house? Where was PW1's daughter Nancy Chepchirchir when this incident occurred? She never testified, in this matter. So far, the above evidence does not assist the court.

45. The other evidence relied on by the prosecution was the recovery of the blood stained somali sword (EXB 1) and Metal Bar/Tyre level 8 (EXB 2). PW5 from the Government chemist who examined these items said he concluded that the DNA profiles generated on the sword matched with the deceased. The T-shirt (EXB 3) said to belong to the accused had some blood. The DNA profiles generated from the said T-shirt was mixed, partial and inclusive DNA profiles of unknown male persons. This means the blood on the T-shirt allegedly belonging to the accused did not belong to the accused. No DNA profile was generated from the metal bar (EXB 2). This evidence by PW5 was therefore of no support to the prosecution case.
46. The remaining evidence is that of recovered letters allegedly written by the accused. Though PW1 & PW6 mentioned this, they never identified the letters in court. PW9 told the court he recovered a bundle of confession letters from under a mattress in one of the rooms. That the said letters were taken to the Document Examiner for examination and the same was found to be positive. These letters were only marked for identification (MFI -7) and not produced as exhibits.
47. The Document Examiner (PW10) said he received the questioned documents (MFI7) and compared them with the accused's specimen writings (B1 - B18) which were taken from him by PW9 while in his custody.

48. Mr Bore has repeatedly submitted that the specimen writings could only be taken with the accused's consent and/or an order of the court since the accused was a minor. That the accused had been compelled to provide handwriting samples which were used to incriminate him. To counsel, the act of writing words and phrases for comparison was self-incriminating.
49. As stated earlier in this matter this court did not agree with the defence on the issue of self-incrimination. Mr Bore represented the accused from the beginning of this case and had in his possession all the material of the case. He never at any point raised the issue of the accused being a minor and having been coerced into writing what were used as specimens. This court did a ruling on this issue on 30th October, 2024 and would not wish to revisit the issue again.
50. As already stated above the only evidence that closely links the accused with this murder are the 3 documents (MFI 7) which are a confession. These 3 documents were never produced as exhibits in this case. The same goes for the specimen writings which were part of the confession bundle (MFI - 7). There can be no assumption on such an important process. Since they were not produced as exhibits, MFI - 7 cannot be taken to be an exhibit, and part of the evidence herein.
51. What PW10 produced was his report (Exb 6a) and not the bundle of confessions (MFI 7) he had been asked to examine.

52. The accused in his sworn defence denied the charge and explained his visit to the home of PW1 and his father the late Joe Kiprotich Marsoi. He challenged the truthfulness of the report EXB 6a.
53. Besides the shortfall in the above evidence, the prosecution came up with an alias name for the accused. This has mainly been displayed in EXB 6a and 6b. I have perused the entire record and have not come across any request for an amendment of the charge sheet neither have I seen any charge sheet in the file bearing an alias name for the accused. The name in the one and only charge is **ARNOLD KIPLANGAT ROTICH**. The police should have looked for the person known as Brian Taita Kiplangat, or explained how the accused was known as “Brian Taita Kiplangat”.
54. Upon due consideration of all the evidence on record I am satisfied that the prosecution has failed to prove its case to the required standard of proof beyond reasonable doubt. The deceased may have met her death through the hands of the accused or someone else other than the accused. It was the duty of the prosecution to prove this case. On my part I find the accused not guilty and acquit him under Section 322 (1) of the Criminal Procedure Code. He shall be released unless otherwise held under a separate warrant.
55. Orders accordingly.

Delivered virtually, dated & signed this 28th day of November, 2025 in open Court at Nakuru.

**H.I. ONG'UDI
JUDGE**