



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KABARNET
CRIMINAL CASE NO. 10 OF 2023

REPUBLICPROSECUTION
VERSUS
MOSES KIPCHIRCHIR.....ACCUSED

JUDGMENT

1. The accused **MOSES KIPCHIRCHIR** was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge were that on the 12th day of November 2021 at Mogotio Estate within Baringo County the accused murdered Veronica Kanini Njuguna.
2. The prosecution availed 7 witnesses to prove their case and upon the accused being found to have a case to answer, he gave sworn statement and did not have a case to answer.

Prosecution's Case:

3. PW1 George Biketi a medical officer testified that he examined the body of the deceased Veronica Kanini Njuguna on 25th November, 2021 and concluded that the cause of her death was axyphicia due to strangulation with right sided blood chest trauma which led to perforation of the lung and bleeding on the chest cavity she produced postmortem in court as exhibit. On cross - examination by the defence counsel Mr. Mwaita, he said the deceased had fresh lacerations on the

labia minora and labia majora. He said they were not able to tell the date of death as the body was already refrigerated.

4. PW2 Mariko Njuguna Muturi who is the husband to the deceased testified that on 12.11.2021 he left his home in Nakuri at around 5.30 a.m. leaving his wife behind. At 9.45 a.m. he called his wife to inform her that he had reached Nairobi and she told him that she was preparing to go to Mogotio to sell seat covers and he asked her to call him when she reaches Mogotio. He said at 4 p.m., the deceased had not called him. He called at and the deceased told him she was about to leave Mogotio. He said he travelled back from Nairobi and on reaching Gilgil, his phone battery went off. He reached Nakuru, charged the phone. on switching on the phone, he saw her missed calls. A neighbor called to tell him that his wife had tried calling him from Mogotio but he couldn't be reached. A neighbor called Marion informed him that his wife had said she was in hospital and needed Kshs.3000/=.
5. He called her and the deceased asked him to send Kshs.3000/= so that she could leave where she was and said she will explain why later. PW2 said he heard someone telling her speak Kiswahili. He said he sent the money to Marion and asked her to send to her. PW2 then called her and she said let them withdraw the money then they come to remove me. PW2 realized she was in danger. PW2 went to report to the DCI at Mogotio.
6. PW2 said at the time he reported to DCI his wife's phone could not be reached but at 11.00 p.m., her phone was on but when he tried calling, he couldn't reach her. He said at 4 p.m., police arrived with a suspect. On being questioned, he said he was with the deceased the previous day and they parted ways but the DCI officers found that he

had the deceased's phone. PW2 identified the deceased's phone the next day. They continued searching his wife with police for about 14 days. He was later asked to go to Mogotio with his daughter. On arriving, he was told his wife had been found in the river. He said he lost consciousness and was unable to go to where the body was. His daughter, neighbor and brother went to the scene. He said he did not attend postmortem and did not see his wife's body because acid had been poured on the body; that she was buried on 30.11.2021.

7. PW3 Rahab Wanjiru a daughter to the deceased testified that on 11.11.2021 at 6.00 a.m., she escorted her mother to stage to board a vehicle and returned to the house. She said they were to meet in Nakuru at noon but at 6 p.m., she had not arrived. At 7 p.m., she tried calling but she could not be reached. At 10 p.m., her phone was on and off. She could her father PW2 who informed her that it seemed her mother had been kidnapped. She went to Mogotio the next day and found her body buried in a bush besides the river. She later identified the body for postmortem.
8. PW4 Rosemary Chebiwot who operate a posho mill near Mogotio Police Station testified that the accused had done casual work of irrigating the farm for her and on 11.11.2021, a woman went to the posho mill to ask for the accused. She gave her a seat to wait for the accused who was in the farm and while waiting, the woman removed table clothes and told her she was selling. She said they entered her house and she spread the table clothes and then PW4 gave her tea and went out. PW4 said accused then arrived and appeared to know her.
9. PW4 said she negotiated for table clothes with the lady and agreed at Kshs.3500/= and they agreed she would bring for her next time. PW4 paid Kshs.1000/= as deposit. She said the next day, the lady went to

her with accused and PW4 told her she would send the money. She said later the lady went to ask for accused but she told her she had not seen him. She said the lady told her she needed money to pay a debt and PW4 send to her Kshs.2000/= and promised to send the balance of Kshs.500/= PW4 said accused did not go back and the next day the police went to ask for the lady. She said its accused who took the lady to her and that she was going around selling table clothes. PW5 No.234819 PC. Kipkurui Kimetto testified on 25.11.202, he attended postmortem conducted on deceased's body at P & N Funeral Mortuary Nakuru.

10. PW6 Marion Njoki testified that on 12.11.2021 at around 5 p.m. the deceased called her using Safaricom line 0790282712 and asked her to send Kshs.3000/= as she was at a very bad place in Mogotio; she told her she was in Hospital then she told her in Kikuyu language *"that is what I have been told to say"* she called the deceased's husband. She sent the money at 6 p.m. then she tried calling the number but it was unreachable. At 10 p.m., she saw the line had tried calling her. She later learnt that she had been killed. She said besides calling her, the deceased sent her text messages.
11. PW7 No.61062 Snr. Sgt. Johnson Wambulwa testified that he is the Investigating Officer in this case. He testified that on 12.11.2025 at around 8 p.m., the DCI called him and asked to go the office and meet with reportee Marika Njuguna Muturi. On meeting with him, he reported a case of kidnapping vide O.B. 98/12/11/2021 which involve his wife Veronica Kanini Njuguna. He said the deceased's number 0790282712 which money had been sent to by phone number 0722435695 was switched off and her Airtel number 0101026234 was also switched off. He said intelligence from Research Bureau showed that the lines were switched off around Mogotio area. They continued

searching until they traced the suspect Moses Kipchirchir Ruto the accused herein at his residence at Kapsigoro around Mogotio, about a kilometer from Mogotio Police Station. They carried on search in his house and found mobile phones; Infinix phone which was identified as belonging to the deceased and 3 mobile phones belonging to the accused. He produced Inventory for the phones recovered and escorted the suspect to police station. He said they filed miscellaneous application to be allowed to hold the suspect for more days to complete investigations and were granted 14 days. He also requested M-pesa statement from Safaricom to confirm and verify the trail of money sent to the deceased and they confirmed that Kshs.4,800/= was transferred from the deceased's number to accused's number. He produced the M-pesa statement for deceased's number 0790282712 with Identity card number 26124628 in court as exhibit 10(a) and Mpesa statement for accused's number 0713055081 with Identity Card number 28727188 as exhibit 10(b).

12. PW7 testified that on 23.11.2021, the accused lead DCI officers to Molo River where the deceased's body was found in a shallow grave along the bunks of the river. He said the scene was processed and the body was retrieved and the body taken to Nakuru for postmortem which was conducted on 25.11.2021. He produced a fair and rough sketch plans of where the body was recovered. Upon close of investigations, the accused was charged with the present offence.

13. PW8 Edwin Kipkemoi Cheruiyot who is a law enforcement Liason officer Safaricom ID number 28727188 testified that on 20.12.2021, he received a Court order from Eldama Ravine SPM's Court Misc.Application No.E053 of 2021. She said the order wanted Safaricom to extract M-pesa statement and account opening documents for account number 0713055081 and 0790282712. He said

they found that No.071305508 It was registered under Moses Kipchirchir Ruto of ID No.28727188 and 0790282712 under Veronica Kanini Njuguna of ID number 26124628. He extracted M-pesa statement and prepared a certificate in respect of the document. He produced the application and Court Order, details of identity cards, M-pesa statements and certification in court as exhibits.

DEFENCE CASE

14. At the close of the prosecution's case, the Court found the accused had a case to answer under Section 306(2) Criminal Procedure Code. The accused gave [sworn/unsworn] testimony and called [number] witnesses. He testified that on 12.11.2021 he had gone to work for PW4. He said the deceased Veronica arrived selling table clothes. He said the deceased asked him to promote her by buying table clothes. She said she told her she did not have money but asked her to sell to him mattress cover instead and they agreed he was to buy 4 at Kshs.5000/=. He said the deceased asked him to give her 2 weeks to supply. He said he gave her Kshs.5000/= and gave her his phone number so that she could call when the mattress covers are ready. He said in the evening PW4 paid him Kshs.300/= and he left. He said after some days, the deceased called him and told him he did not get the mattress covers he wanted and he told her to refund the money and she refunded Kshs.4800/= and she was to send Kshs.200/= the next day.

15. The accused denied meeting with the deceased after meeting in PW4's house and did not talk to her until the day he was arrested. He said he had not met the deceased before the day they met at PW4's

house. He said his phone was taken from him. He denied being involved in the death of the deceased.

ANALYSIS AND DETERMINATION

16. I have carefully considered the evidence adduced by the eight (8) prosecution witnesses, the sworn testimony of the accused.

The issues that fall for determination are:-

- Whether the death of the deceased, **Veronica Kanini Njuguna**, occurred and the cause of death;
- Whether it is the accused who caused that death by an unlawful act;
- Whether the prosecution proved malice aforethought as required under Section 206 of the Penal Code; and
- Whether the defence advanced creates reasonable doubt.

(i)Whether the Death Occurred and the Cause of Death:

17. The fact and cause of death are not in dispute. PW1, a medical officer, conducted the postmortem on 25.11.2021 and concluded that the deceased died from **asphyxia due to strangulation**, accompanied by **right-sided chest trauma**, a **perforated lung**, and **massive haemothorax**. She also noted **fresh lacerations on the labia minora and majora**, indicating recent injuries.

18. The body had been recovered from a **shallow grave along River Molo**, in a decomposed state with signs that acid had been poured on it. The medical evidence was unchallenged and I find that the deceased died as a result of violent, unlawful assault.

(ii)Whether the Accused Caused the Death

20. The prosecution case rests on a combination of **circumstantial evidence, digital/telecommunications evidence, last-seen**

interactions, and the accused's own conduct. There was no eyewitness to the killing. The Court must therefore consider whether the chain of circumstantial evidence meets the established legal test.

(a) The Last Known Movements of the Deceased:

21. The deceased was last known to be travelling to **Mogotio** to sell tablecloths. PW4 placed her at Mogotio on **11.11.2021**, where she interacted with the accused twice. PW4 testified that the accused appeared to know the deceased, accompanied her, and later took her to PW4's home. This is the **last confirmed positive interaction** between the two.

22. The accused admitted meeting the deceased and transacting business with her. He also admitted receiving Kshs.4,800/=, which PW7 and PW8 established was transferred from the deceased's phone to his phone. His explanation was that this was a refund for a purchase of mattress covers.

23. The Court notes that the deceased's last desperate messages and calls through PW6 originated from the same Safaricom number linked to M-Pesa transfers to the accused. She told PW6 she was "in hospital" but then disclosed in Kikuyu that *"that is what I have been told to say."* This strongly suggests coercion.

(b) Recovery of the Deceased's Phone from the Accused:

24. PW7, the investigating officer, testified that the accused was tracked, arrested, and found with the deceased's **Infinix mobile phone**, positively identified by the family. This directly links him to the deceased after she disappeared.

25. The accused provided no credible explanation for being in possession of the deceased's phone shortly after she was reported missing.

(c) M-pesa Trail Linking Accused to Deceased:

26. PW7 and PW8 produced verified M-Pesa statements showing that **Kshs. 4,800/=** was transferred from the deceased's line **0790...712** to the accused's line **0713...081** on the night she disappeared.

27. Although the accused claimed this was a refund for goods undelivered, PW4's testimony contradicts this narrative. PW4 testified that she herself sent money to the deceased because the deceased was stranded and in distress. This contradicts the accused's claim that the deceased was refunding him money.

28. This Court finds the refund explanation to be a **self-serving afterthought** inconsistent with the objective mobile money records and the victim's distress messages.

(d) Recovery of the body through leads from the Accused:

29. PW7 testified that the accused led officers to River Molo where the deceased's body was recovered from a shallow grave. The accused did not challenge this evidence nor provide an alternative explanation as to how he knew the burial site. Under *Musili Tulo v Republic [2014] eKLR*, knowledge of the location of a body unexplained by the accused is powerful circumstantial evidence linking him to the offence.

30. This is a **critical piece of circumstantial evidence** and demonstrates knowledge that could only have come from participation in or proximity to the killing.

(e) The Circumstantial Evidence Test:

31. The chain of evidence shows:

- The accused was the **last person positively linked** to the deceased while alive;
 - The deceased's phone was recovered in the accused's possession;
 - Money was transferred from the deceased's phone to the accused's during the period she was kidnapped;
 - The deceased made distress calls indicating coercion;
 - The accused led police to the burial site of the deceased.
32. This chain is complete, unbroken, and incapable of explanation upon any reasonable hypothesis other than that **the accused participated in the killing.**

(iii) Whether Malice Aforethought Was Proved

33. Malice aforethought, under Section 206 of the Penal Code, may be inferred from the nature of injuries, the conduct of the accused, and the circumstances leading to death.
34. In this case, the deceased was:
- Strangled;
 - Suffered chest trauma causing a perforated lung;
 - Buried in a shallow grave;
 - Subjected to disposal efforts including pouring acid.
35. The nature of the injuries demonstrates deliberate, forceful, and targeted violence on vital organs. Strangulation is an inherently intentional act. The burial and attempted destruction of evidence further exemplify a **conscious, deliberate effort to conceal the crime.** These circumstances overwhelmingly demonstrate **malice aforethought** as defined under Section 206(a) and (b) being intent to cause death or grievous harm and Knowledge that the act or omission would probably cause death.

(iv) The Defence of the Accused

36. The accused denied any involvement, stating that he only met the deceased for business, gave her money, and later received a refund. He denied having her phone or leading police to the scene. His defence is directly contradicted by the recovery of the deceased's phone from him; the M-Pesa records; PW4's credible testimony on the nature of their interactions and PW7's evidence that he led them to the burial site. From the foregoing, the defence does not raise any reasonable doubt. It is displaced by the consistent, corroborated prosecution evidence.

40. From the foregoing, the prosecution has proved the ingredients for the offence of murder contrary to Section 203 as read with Section 204 has proved beyond any reasonable doubt.

41. **FINAL ORDERS:**

a) I hereby find the accused **MOSES KIPCHIRCHIRB** of the offence of **Murder** contrary to Section 203 as read with Section 204 of the Penal Code, and I convict him accordingly under Section 215 of the Criminal Procedure Code.

b) Right of appeal within 14 days explained.

Ruling delivered, dated and signed virtually at **Kabarnet** this **27th** Day of **November** 2025.



.....
RACHEL NGETICH
JUDGE

In the presence of:

CA: Elvis

Ms. Kosge for State

Ms. Kogo Accused

ORIGINAL