

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAJIADO**

**CRIMINAL CASE NO. 17 OF 2019**

**REPUBLIC .....PROSECUTOR**

**-VERSUS-**

**JIMMY NJENGA GITHIGA.....ACCUSED**

**JUDGMENT**

1. **Jimmy Njenga Githiga**, hereafter the Accused, is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars being that on **5<sup>th</sup> August, 2019** at **Emanyatta sub-location, Kibiko B, Kajiado North Sub-County, Kajiado County**, jointly with others not before the court, he murdered **Joseph Muria Githiga** (hereafter the deceased). The Accused denied the charge and the matter proceeded to full hearing, the prosecution calling 13 witnesses in support of their case.
2. Pursuant to the ruling of then trial Judge, **Mutuku J** delivered on 26<sup>th</sup> September, 2024, the Accused was placed on his defence. The Accused elected to give a sworn statement, and called two witnesses

in his defence, which proceeded before me under Section 200(3) of the Criminal Procedure Code, upon the transfer of **Mutuku J.**

3. The first witness for the prosecution was **Loise Wanjiku Muria (PW1)**, the deceased's wife. It was her evidence that at the material time, she and the deceased and their son **James Mbai Muria (PW2)** resided at **Kibiko B** on a piece of land allocated to the deceased by his deceased polygamous father, and who was also the father of the Accused by his second wife, which family also lived on land similarly allocated to them, as did the family of third wife. According to **PW1**, during and after the lifetime of her father-in-law, she had operated a hotel at a premises erected on a plot in Ngong town (hereafter the town plot) which had been owned by the said father-in-law. And that after the death of her father-in-law, a dispute arose in the family after the Accused claimed that the property had been bequeathed to him via a will made by his father before his death.
4. **PW1** testified that on the morning of 5.08.2019, the deceased had escorted her to her hotel at Ngong town, before returning home to carry out his farm activities, and was expected to return to the hotel

later in the day, as was his custom. He did not, and when **PW1** and **PW2** eventually got home at about 8:30pm, they found the compound in darkness, and the main door ajar, before they discovered the deceased's body near the kitchen door. His neck was nearly severed and the body which lay in a pool of clotted blood bore stab wounds. Police who were called documented the scene before removing the body.

5. **PW1** described prior threats to the deceased's life, arson and eviction attempts, and property disputes which she attributed to the Accused, including incidents when the Accused supervised demolition of her family's property and arson. **PW2** recounted the discovery of his father's lifeless body at the family home on the material night and stated that prior to his death, his father had confided in him concerning threats to his life by the Accused.
6. **Samuel Thuita (PW3)**, stepbrother to the deceased and son of their father's second wife therefore brother to the Accused, confirmed the gifting of separate parcels of land by their father to his three wives before his death and ensuing dispute over the Ngong

town plot to which the Accused laid claim. He testified that the Accused had demanded that the deceased leave the town plot and on one occasion sent the witness with a message to warn his elder brothers, that he would kill them if they continued to claim the town plot whose fence he was erecting at the material time. And that although the matter was reported to police, the family was advised to go to court. .

7. **Daniel Kimotho Githiga (PW4)** a stepbrother to the deceased and brother to the Accused also recounted the running dispute between the deceased and the Accused regarding the town plot and that on one occasion in 2017, he overheard the Accused tell a waiter known as *Mkisii* that he would kill anyone interfering with the town plot. **David Muhia Githiga (PW5)** the deceased's elder brother stated that **PW1** operated a business at the disputed town plot claimed by the Accused, who had also attempted to demolish the premises thereon and after a report was made to police, they removed the Accused from the plot.

8. Another brother to the deceased, and step-brother to the Accused, **John Muimbo Githiga (PW6)**, recounted the family dispute over the town plot which the Accused claimed as given to him by their father, and that he had on three separate occasions heard the Accused state that he was ready to kill "*because of the plot*".
9. **Esther Mwhaki Thuita**, the wife to **PW3** testified as **PW7**. The witness described the presence of two strangers near the deceased's home on 4<sup>th</sup> and 5<sup>th</sup> August 2019 and described the Accused as hostile and hateful toward family members. On his part, **John Njoroge Chaure (PW8)**, a nephew to the deceased, reported the murder to police and accompanied them on the material night to the scene, where he viewed the body of the deceased. He said he was unaware of any family dispute.
10. **Mary Wangari Githinji** a wife of a brother to the Accused, testified as **PW9** . She recounted an incident on 23.03.2017 when the Accused, her husband's step-brother accosted her in Ngong town and referring to her husband and the brothers as "*wakora*" said he would "*cut*" them up for their attempts to deny him his rightful

property, which she understood to be the town plot which the Accused claimed to be his.

11. **PC Philomena Mutemi (PW10) of Ngong Police Station**

testified that on 8.06.2018, the deceased had reported an attempted arson at his home vide **OB No. 16 of 8<sup>th</sup> June 2018**, and upon accompanying him to the scene observed the presence of charred property, and what appeared to be remnants of an accelerant in a container at the scene .

12. **Cpl. Emmanuel Ekai (PW11)** was the crime scene personnel

who on the material date documented the scene through 7 photographs showing the scene and injured body of the deceased, lying in a pool of blood. He produced the photographs and report dated 12.09.2019 as **Exh. 3** and **4** respectively.

13. The lead investigator, **CIP Jeniffer Kiilu** testifying as **PW12**

stated that having reviewed the OB reports and witness statements, she concluded that the Accused had a motive and history of repeated threats. Hence, she arrested him. The final witness for the prosecution was **Dr. Kaburu David (PW13)** who conducted the

postmortem on the deceased's body and concluded from injuries noted that his death was due to haemorrhagic shock due to severed neck and deep cut and stab wounds to the abdomen, due to sharp trauma which he associated with a violent attack. He produced the postmortem report dated 12.08.2019 as **Exh. 1**.

14. In his sworn defence statement, the Accused, introduced himself as a farmer, an assistant chief, **Emanyatta sub-location** and resident of Kibiko. He stated that he had left his home on the material date, arriving at his office at 8:00am, and thereafter left at 9:00am to attend a baraza to discuss security and land issues at Ngong Hills where he remained until 5:00pm. He produced minutes of the meeting dated 5.08.2019 as **DExh 1**. Confirming that the deceased was his step-brother, who lived some 5km away from his own residence, he asserted that he had a good and peaceful relationship with the deceased and other siblings in his father's polygamous family of three wives, and that the extended family freely visited each other .

15. While asserting that his father had distributed his land between his three families before death, he said he had bequeathed the town plot to him through a will. He added that **PW1** had leased the plot from his father, and that he did not engage with her though unable to collect rent, or take possession of the plot, and that he was awaiting the resolution of the succession dispute. He said that despite his good relations with his siblings, the administrators appointed in **Ngong Succession Cause No. 69 of 2018** in respect of his father's estate had refused to effect transmission of his share of his father's estate, in his favour .
16. During cross-examination, the Accused said he was a former chief Emanyatta sub-location, and refuting allegations levelled against him by **PW1,2,4 ,7** and **10** maintained that he had a good relationship with his siblings. The first defence witness, **Simon Ngige Kimani (DW1)** testified that he knew the Accused from his childhood as a person of good character and while he did not know how the Accused related with his extended family, he was unaware of any conflict between them. As for **Samuel Kuyioni Sakuda (DW2)**, he testified to have attended the meeting of 5.08.2019, also

attended by Kenya Forestry Service (KFS) personnel, and called to discuss security and conservation issues. He admitted during cross-examination that he did not have any identification documents, and confirmed being unaware of the nature of the instant case or the subject murder.

### **Submissions**

17. By submissions dated 2<sup>nd</sup> May, 2025, the defence challenged the prosecution case on the three essential elements of the offence of murder: the fact of death, causation, and malice aforethought. While the defence conceded that the death of the deceased occurred and was confirmed through a post-mortem report, it strongly contested the second and third elements—namely, that the Accused caused the death and did so with malice aforethought.
18. Counsel argued that there was no direct evidence linking the Accused to the act of murder, as none of the prosecution witnesses placed him at the scene of the crime, nor observed him commit the act. And reiterating the alibi defence, counsel asserted that the Accused's alibi was not investigated or rebutted by the prosecution.

Citing the Court of Appeal holding in **Erick Otieno Meda v. Republic Criminal Appeal No. 55 of 2015**, to the effect that there is no onus on the Accused to prove an alibi. And the South African case of **S v. Sithole 1999 (1) SACR 585 (W) at 590** regarding the standard of proof beyond reasonable doubt in criminal cases, hence an accused's entitlement to acquittal where there was reasonable doubt as to the credibility of evidence implicating the accused.

19. Concerning malice aforethought, the defence counsel contended that the prosecution failed to prove premeditation or intention to kill. Observing that despite witnesses testifying on past threats allegedly made by the Accused, these were not contemporaneously reported to authorities. And besides, were vague, undated, and uncorroborated. Further, in the defence view, the investigating officer did not explain why the accused was singled out as the suspect, especially in light of **PW7's** testimony on the strange men seen near the deceased's home in possession of a bloody knife around midday on the material date.

20. The defence further argued that the prosecution case is built entirely on circumstantial evidence, which in this case falls short of the legal threshold, and relied on **Moses Kakee Karuoya v. Republic (2016)**, and **Mwangi & Another v. Republic (2004) 2 KLR 32**, and **Sawe v. Republic (2003) KLR 364**. In conclusion, the defence submitted that the prosecution has failed to establish the Accused's guilt beyond reasonable doubt and urged the court to acquit him.

21. The prosecution submissions are dated 14<sup>th</sup> July, 2025. Therein the prosecution counsel contended that the prosecution had discharged its onus of proof of murder as defined in Section 203 of the Penal Code. And that all elements—death, causation, malice, and perpetrator have been proven beyond reasonable doubt. Starting with the death of the deceased and cause as confirmed by **PW13**, who conducted a postmortem and concluded that he died from sharp trauma to the neck, consistent with a deep cut.

22. Regarding their reliance on circumstantial evidence, the prosecution cited the holding in **Republic v Kipkering Arap Koskei**

**& Another [1949] 16 EACA 135**, that " *to justify a conviction on 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.*"

23. Concerning motive, the prosecution reiterated the longstanding dispute over the town plot and threats by the Accused as described in testimony by **PW1** to **PW6** and **PW9** and as corroborated by OB records from Ngong Police Station citing OB 16/8/6/2018. Further reiterating conduct by the Accused in procuring public health officials to intimidate the deceased's wife, supervising demolition at the town plot, and failing to attend the burial as indicative of guilt.

24. The prosecution challenged the alibi defence, citing the timing of the murder in the daytime, and stated that the minutes produced as **DEhx. 1** were patently authored and stamped by the Accused himself while **DW2**, lacked neutrality. They relied on the statement in **Republic v Sukha Singh s/o Wazir Singh & Others [1939] 6 EACA 145**, that where there is strong evidence of the accused's guilt, an alibi may be rejected. And further, the Ugandan case of

**Uganda v Charles Ojok (Criminal Session Case No. 0014 of 2014)**, where prior threats and suspicious behavior led to conviction, and drawing parallels to the Accused's conduct in this case.

25. As regards malice aforethought, the prosecution invoked the provisions of Section 206 of the Penal Code to assert that the ingredient can be inferred from repeated threats, the violent nature of the killing, and the Accused's aggressive conduct. Emphasising here that causation under Section 213 of the Penal Code includes acts that foreseeably contribute to death, even if the Accused did not inflict the fatal wound directly. The prosecution contending therefore that the Accused's threats, supervision of hostile acts, and proximity to the time and place of death establish sufficient causal connection.

26. In conclusion, the prosecution dismissed the alibi defence as weak, uncorroborated, and incapable of displacing the prosecution case. They submitted that the Accused had motive, opportunity, and means, and that the circumstantial evidence points inexorably to his guilt. Thus, urging the court to find the charge proven beyond reasonable doubt and to convict the Accused of the offence charged.

## **Analysis and Determination**

27. The undisputed background to the charges facing the Accused is as follows. The deceased and the Accused are step-brothers, among many siblings. Their deceased father had three wives, with whom he sired several children, and owned a piece of land at **Emanyatta sub-location Kibiko B** as well as a commercial plot in Ngong town (the town plot) on which was erected a business premises from which the deceased's wife **PW1** had operated a hotel during the lifetime of the father-in-law, and continued occupation after his death.

28. Prior to his death the said father distributed his land situated at **Emanyatta sub-location, Kibiko B** to each of his wives (houses). Members of the three families, including the Accused resided on their assigned portions of land at **Kibiko B**, the said father spending his final years in the home and under the care of the Accused.

29. In the material period, the Accused was the assistant chief Emanyatta sub-location, his home being at **Kibiko B**, and following

the death of his father, he asserted that the town plot had been bequeathed to him by his father under a will. A dispute arose between him and the rest of his extended family including the deceased, who disputed the Accused's claim. It would appear that the succession proceedings relating to the town plot were pending before the court when the deceased was murdered at his home on 5.08.2019.

30. The charges against the Appellant are brought under Section 203 of the Penal Code which states that :

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

31. The particulars of the charge state that on ***5<sup>th</sup> August, 2019 at Emanyatta sub-location, Kibiko B, Kajiado North Sub-County, Kajiado County, jointly with others not before the court, he*** (Accused) ***murdered Joseph Muria Githiga***". In criminal cases, the onus lies with the prosecution to prove charges against accused persons beyond reasonable doubt, and the burden never shifts.

32. Thus in this case, the onus was on the prosecution to prove the ingredients of the offence preferred against the Accused. Namely, the *fact* and *cause* of the death of the deceased person, and that it is the *unlawful actions* or *omissions* of the Accused with others not before the court, and *with malice aforethought* that led to the deceased's death, as held in **Roba Galma Wario vs. Republic [2015] eKLR.**

33. The prosecution case in the instant case rests on circumstantial evidence; none of the witnesses testified to have been witnesses to the assault leading to the death of the deceased or gave any kind of direct evidence to that effect.

34. That said, in **Ahamad Abolfathi Mohammed & Another v Republic (2018) KECA 743 (KLR)** where the key evidence upon which the appellants had been convicted was circumstantial, the Court of Appeal stated that:

**"However, it is a truism that the guilt of an accused can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence, which enables a**

**court to deduce a particular fact from circumstances or facts which have been proved. Such evidence can form a strong basis for proving the guilt of an accused just like direct evidence.** Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in *R v Taylor, Weaver & Donovan* (1928) 21 CR. App. R 21 , :

**“ It has been said that the evidence against the applicant is circumstantial. So it is, but circumstantial evidence is very often the best. It is the evidence of surrounding circumstances which, by intensified examination, is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial.”**

35. In *Mwangi v Republic* [1983] KLR 327, the Court of Appeal in considering the weight of circumstantial evidence observed as follows:

**“In order to draw the inference of the accused’s guilt from circumstantial evidence, there must be no other co-existing circumstances which would weaken or destroy the inference. ....”**

36. The threshold for a conviction founded on circumstantial evidence was spelt out by the Court of Appeal in **Abanga alias Onyango vs. Republic (CR. App. No. 32 of 1990) LLR No. 3975** as follows:

**“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests:**

- i. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;**
- ii. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;**
- iii. The circumstances taken cumulatively, should form a chain so complete that there is no escape**

**from the conclusion that within all human probability the crime was committed by the accused and none else.”**

37. Similarly, the same Court reiterated the applicable principles in **Joan Chebichii Sawe vs. Republic [2003] eKLR** as follows:

**“As we have already pointed out, the evidence in this case was entirely circumstantial. 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. There must be no other co-existing circumstances weakening the chain of circumstances relied on. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden, which never shifts to the party accused.”**

38. The foregoing cases echo the timeless principles pronounced in earlier decisions with regard to circumstantial evidence, including **Republic - vs Kipkering Arap Koske [1949]16 EACA 135** and **Simoni Musoke -vs- Uganda (1958) EA 715.**

39. The fact of the deceased's death is not disputed. The deceased was early on the night of 5.08.2019 found by **PW1** and **PW2** lying in a pool of curdled blood, in the veranda of his open house, in circumstances suggesting his death had occurred much earlier in the day, having parted with **PW1** earlier in the morning. The witnesses stated that his neck was almost severed, while he had deep injuries to the abdomen.

40. Similarly, the cause of death as documented by **PW13** during the post mortem conducted on 12.08.2019 is not in dispute. The external injuries are described in the postmortem form (**Exh.1**) as follows;

- **slit neck anteriorly above the cricoid bone with complete severance of trachea, aesophagus and right carotid artery.**

- **stab wound on the right hypochondrial region medially = 4cm transverse.**
- **longitudinal cut wound left lumbar region = 15cm with intestines and ruptured stomach hanging out.**
- **cut wound tip of left thumb, base of left index finger and 4<sup>th</sup> finger palmar side “.**

41. According to **Exh. 1**, the internal injuries noted were ***“ruptured stomach lateral aspect and penetrating wound right lobe of liver running obliquely laterally”***. **PW13** concluded that the cause of death was ***“haemorrhagic shock due to sharp force trauma due to murder”***.

42. From the foregoing and the photographs of the body in **Exh. 3**, it is undeniable that the deceased's death was due to a violent and unlawful act by another person or persons . Regarding the *actus reus* of the offence of murder, Section 213 of the Penal Code states that:- ***“A person is deemed to have caused the death of another person although his act is not the immediate or the sole cause of death in any of the following cases :-***

- a. if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;**
- b. if he inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living;**
- c. if by actual or threatened violence he causes such other person to perform an act which causes the death of such person, such act being a means of**

**avoiding such violence which in the circumstances would appear natural to the person whose death is so caused;**

**d. if by any act or omission he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;**

**e. if his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons."**

43. On the other hand, principal offenders are defined in Section 20 (1) of the Penal Code as follows:

**"(1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say-**

**a) every person who actually does the act or makes the omission which constitutes the offence;**

- b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;**
- c) every person who aids or abets another person in committing the offence;**
- d) any person who counsels or procures any other person to commit the offence;**

**and in the last-mentioned case he may be charged either with committing the offence or with counselling or procuring its commission.**

**(2) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.**

**(3) Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part is guilty of an**

**offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission; and he may be charged with doing the act or making the omission."**

44. Regarding the common intent of joint offenders Section 21 of the Penal Code provides:

**"When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such a purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence."**

45. In this case the common intention of the joint offenders, or *mens rea* to be proved is an intention to cause death or knowledge that the act or omission would cause death, as stated in the definition of malice aforethought in Section 206 of the Penal Code.

Evidently, the injuries described by **PW13** and documented in the photographs of the body taken by **PW11** in relation to the deceased, were of such a severe nature that whoever inflicted them intended to cause no less than the death of the deceased. Indeed malice aforethought as defined in Section 206 of the Penal Code can be inferred from the nature of the injuries sustained by a victim of assault.

46. Section 206 of the Penal Code is in the following terms:

**"Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances**

**(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;**

**(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is**

**accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;**

**(c) an intent to commit a felony;**

**(d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony."**

47. In **Nzuki v Republic [1993] KLR 171**, the Court of Appeal observed that malice aforethought can be inferred from the acts of an accused person. The Court stating that :

**"Malice aforethought" is a term of art and is either an express intention to kill, as could be inferred when a person threatens another and proceeds to produce a lethal weapon and uses it on his victim; or implied, where, by a voluntary act, a person intended to cause grievous bodily harm to his victim and the victim died as the result."**

48. Here, the prosecution appears to assert both an express and inferred intention on the part of the Accused, in conjunction with others not before the court, to cause the death of or do grievous harm to the deceased. The key dispute in this case centred around the identity of the person or persons whose joint actions or omissions occasioned the fatal injuries leading to the death of the deceased. Here, Sections 20 and 21 of the Penal Code cited above become instructive.

49. In the case of **Stephen Ariga & Another -Vs- Republic [2018] eKLR** the Court of Appeal considered the definition of common intent in Section 21 of the Penal Code before stating that:

**“What common intention implies was set out by the predecessor of the Court in Wanjiru d/o Wamerio versus Republic 22 EACA 521 as follows:-**

**“Common intention generally implies a premeditated plan, but this does not rule out the possibility of a common**

**intention developing in the course of events though it might not have been present to start with.**

50. The Court further observed that:-

**“The ingredients of common intention were enunciated in Eunice Musenya Ndui -Vs- Republic, Criminal Appeal No. 534 of 2010 (2011) eKLR as follows: -**

- (1) There must be two or more persons;**
- (2) The persons must form a common intention;**
- (3) The common intention must be towards prosecuting an unlawful purpose in conjunction with one another;**
- (4) An offence must be committed in the process;**
- (5) The offence must be of such a nature that its commission was a probable consequence of the prosecution of the unlawful purpose”.**

51. As underscored in the defence submissions, there were no eye witnesses to the incident in which the deceased was attacked while at his home, and possibly preparing to have a meal as evidenced by the scene photographs subsequently taken by **PW11**. The gory photographs of the deceased's body in conjunction with findings in **Exh. 1** point to a vicious and violent assault in which the deceased was literally slaughtered, and the possibility of the involvement of more than one person. Hence, the charge particulars stating that the Accused committed the offence jointly with others not before the court.

52. According to **PW1** she and the deceased lived in their house built on the same compound with their last born son, **PW2** who had his own separate house, their other two adult children having left home. She said that the deceased, having retired from his butchery business, kept cattle and chicken. His daily routine entailed rising early in the morning, to escort **PW1** to her business premises at the town plot, then return home to attend to farm activities and later in the afternoon, deliver kindling to the business premises of **PW1**, before going back home.

53. On the material date however, after escorting **PW1** to town and going back home that morning, the deceased did not return to the business premises in the afternoon, as **PW1** discovered on return to the business at 5:00pm from a church activity. This evidence together with the observations by **PW1** and **PW2** that the pool of blood where the deceased lay appeared curdled, suggests that the deceased was killed earlier in the day. Evidently, he was alone at the time, as **PW2** arrived home after 8:30pm almost at the same time as his mother **PW1**.

54. What is the circumstantial evidence tending to create a nexus between the Accused and the murder of the deceased? Before considering the evidence, it is apposite to observe here that the bulk of the prosecution witnesses testified on the raging dispute over the town plot between the Accused, the eldest son of his father's second wife, on one hand, and his own immediate siblings and extended family, on the other.

55. It would appear that the dispute was especially intense as between the Accused and the deceased, a son of his father by the

first wife because, the deceased's wife, **PW1** having carried on a business on the town plot in the lifetime of their father and paying rent, had held over occupation after the father-in-law's death, did not pay further rent or leave the premises claimed by the Accused as his exclusive inheritance. To the chagrin of the Accused who claimed that his deceased father bequeathed the plot to him by a will, also disputed by the rest of his family. In his evidence before the court, the Accused reiterated his entitlement to the town plot while asserting that despite the dispute surrounding the town plot, he had a good relationship with his siblings and extended family.

56. Motive is not an ingredient of murder, and Section 9 (3) of the Penal Code stipulates as follows:

**"Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility."**

57. In the case of **Choge vs Republic (1985) KLR 1**, the Court of appeal held as follows:-

**"Under Section 9(3) of the Penal Code (cap 63), the prosecution is not required to prove motive unless the provision creating the offence so states, but evidence of motive is admissible provided it is relevant to the facts in issue. Evidence of motive and opportunity may not of itself be corroboration but it may, when taken with other circumstances, constitute such circumstantial evidence as to furnish some corroboration sufficient to establish the required degree of culpability...."**

58. In **Libambula Vs. Republic [2003] KLR 683**, the Court of Appeal defined motive in the following terms:

**"Motive is that which makes a man do a particular act in a particular way. A motive exists for every voluntary act and is often proved by the conduct of a person. See Section 8 of the Evidence Act Cap. 80 Laws of Kenya. Motive becomes an important element in the chain on presumptive proof and where the case rests on purely circumstantial evidence. Motive of course, may be**

**drawn from the facts, though proof of it is not essential to prove a crime.” (Emphasis added)**

59. Although motive is not an ingredient of the offence of murder, the brutal manner in which the murder of the deceased was executed, including the near decapitation, the cleaving open of his abdomen thus dislodging his intestines and stomach, the latter which was ruptured, attests to the assailants' determination to ensure death, extinguishing any chance for the survival of their victim. There was no evidence of any property taken away from the home, nor do the photographs of the scene portray any possibility of a scuffle and the deceased's body did not appear to have any defensive injuries as would have been expected if he had had a chance to resist the attack in which apparently sharp weapons were used. Indeed, from the set of keys with padlock and *sufuria* on the table as captured in the photographs produced as **Exh. 3**, it appears that the deceased was suddenly ambushed by more than one person while in the house.

60. Evidently, with their intentions executed, the killers left the scene, well before anyone came to the home. All this pointing to the

fact that their singular mission was to kill the deceased. These circumstances raise the important motive-related question: Who wanted the deceased dead, and why? Because, it is amply evident from the timing of the murder (when the deceased's family was away) by people wielding very sharp weapons, probably knives or swords, who uninterrupted, and methodically executed their macabre intentions before slipping away, that this was a well planned execution.

61. According to **PW1**, as soon as her father-in-law died, the Accused commenced a campaign to remove her from the premises on the town plot, but the deceased repeatedly told her not to move. Hence, the Accused was hostile towards her husband. Under cross-examination, **PW1** said the Accused had made several attempts to evict her from the town plot which were reported to police, that the Accused was set against the rest of the family, and that after the death of her father-in-law, she did not pay rent for the business premises because in her view, her husband had a share in the town plot.

62. She recounted two arson incidents at her home also cited by **PW2**, one completely burning down their house which the family perceived as a bid to threaten the deceased, the marking of doors with letter 'X' and demolition of the wall at the town plot, all arising from the dispute. On his part, **PW2** stated that because of the dispute over the town plot between his father and the Accused, the Accused had threatened to kill him, a matter disclosed to him by the deceased, and reported to police. He admitted during cross-examination that he was not on speaking terms with the Accused as a result.

63. **PW3**, a brother of the Accused by the same mother described the dispute pitting the Accused against the deceased, the former demanding that the latter vacate the plot and efforts to evict the deceased. He recounted an incident when the Accused sent him with a warning to be relayed to his brothers, whom he named during cross-examination as David Muria, the deceased, and John Nganga another brother. To the effect that if they continued pursuing the town plot, he would kill them. And how the latter brother on

receiving the message had dismissed the threat. He stated that the Accused did not attend the funeral of the deceased.

64. Another brother of the Accused, **PW4** referring to the dispute over the town plot said that in 2017 he heard the Accused tell a third person named *Mkisii* that he would kill anyone interfering with the town plot and stated during cross-examination that he was unaware of the alleged will of his father concerning the town plot. **PW5**, a brother to the deceased described the dispute over the town plot adding that he had heard of threats issued by the Accused to the deceased's life, and that the Accused did not attend the burial of the deceased.

65. **PW6**, another brother to the deceased testified how on three occasions he heard the Accused express his readiness to kill over the town plot, adding during cross-examination that the Accused did not attend the burial of the deceased, and reiterating in re-examination threats by the Accused to kill, which the witness did not take seriously until the murder of the deceased.

66. The evidence of **PW9**, a wife to the deceased's step-brother and brother to the Accused was that the Accused accosted her on 23.03.2017 in Ngong town and told her that he would "cut up" *bwana zenu wakora* (your crooked husbands), which because of the dispute over the town plot, the witness understood to be reference to her husband, the deceased and other brothers, whom the Accused said were trying to snatch the town plot from him. She recounted how in 2018 the deceased's house had been completely burnt down.
67. The attempted arson incident described by **PW1, PW2 and PW9** was according to **PW10** reported to Ngong Police Station on 8.06.2018 by the deceased and the witness accompanied the deceased to his home where she saw burnt clothes, soot on the wall of the house and a container which bore the smell of an accelerant. The OB abstract no. 16/8/6/ 2018 at 9:56am marked as **MFI 2** was inexplicably not produced, nor other OB abstracts concerning reports made to police as recounted by witnesses. This was not the only incident as the same witnesses described another arson incident during which the deceased's house was razed to the ground.

68. Pausing here, this evidence if true, paints the picture of deep animus and aggression on the part of the Accused against his siblings for disputing his entitlement to the town plot, and especially the deceased who refused to vacate the premises on the town plot used for business by his wife. Almost without exception, the family of the deceased including siblings who testified described threats made by the Accused against them and more so the deceased, which according to **PW1** and **PW2** were reported to police, without action being taken.

69. The evidence describes the actions attributed to the Accused in his relentless campaign through direct and indirect acts of aggression, including threats to life, a night gutting of the deceased's home and attempted arson, in the bid to intimidate the deceased and his brothers to give up claims to the town plot. Beyond verbal threats to other brothers however, there were no other direct and personal acts of aggression against them such as described in respect of the deceased.

70. It is notable that these witnesses included the Accused's own brothers, their wives and step-brothers. While it is true that there was an ongoing succession dispute over a single asset of their father's estate involving the entire family, one wonders why the entire family, including the Accused's own brothers from the same mother would make false claims against the Accused who, on his part maintained that he had a good relationship with everyone family.

71. It is apparent from these witnesses that even as the succession dispute was pending in court, the income from the business premises on the town plot was shared by all of them in that period and that among them, they had no dispute concerning the town plot. Their position being that all of them were entitled to a share of the town plot in respect of which the Accused claimed exclusive entitlement.

72. The evidence by **PW1-9** was not shaken during cross-examination, and while owning up concerning the existence of a dispute over the town plot, the witnesses appeared to have no personal axe to grind with the Accused. Indeed one of the brothers **PW3** said during cross-examination that *"Accused is my brother. My*

*only issue is that he stops threats...Accused has anger issues". On his part, another brother of the Accused **PW4** stated in cross-examination that "We are accusing him only because he used to threaten the deceased. I told our elder brother John Nganga (about a statement made in his hearing by the Accused that he was ready to kill for the town plot). Accused refused to come to (family) meetings".*

73. The core evidence by the prosecution as regards threats to life and hostile actions including attempts to evict **PW1** and arson attempts was not expressly refuted in the Accused's evidence -in-chief. However, the defence in submissions dismissed it as worthless chiefly because it was not accompanied by related police OB abstracts. With respect, the witness's accounts, especially concerning threats to the deceased's life and arson attempts, qualify under Section 63 of the Evidence Act as direct oral evidence of what the witnesses saw, heard and perceived. The accounts related to a specific span of time, and were consistent.

74. While it is true that OB extracts would have supported this evidence, such extracts would have been based on the reports of the same witnesses and the value of the direct evidence is not diminished merely because OB abstracts were not produced. The court would be entitled to accept that evidence if satisfied that the testimony of the witnesses was credible and believable. In this case, the witnesses appeared to be truthful persons and their testimonies were consistent. That said, according to **PW12**, on the morning of 8.06.2018, the deceased reported an attempted arson at his home, apparently on the previous night, which the witness confirmed during her visit.

75. Secondly, the defence submission appears to ignore the fact that while the Accused's brothers were themselves ordinary folk, the Accused at the material time held the powerful position of assistant chief in the same area in which he resided, which also fell under the jurisdiction of Ngong Police Station. Indeed in his testimony before this court, the Accused started by introducing himself as such, before hastily retracting the statement following a challenge by the prosecution in cross-examination. Thus, it is not implausible in the

court's view, that despite reports against the Accused being made to the local police, hardly any decisive action was taken.

76. His brothers including **PW3** and **PW4** as well as **PW1** describe a man who was dismissive of his siblings, refused to attend meetings called to discuss the succession issues and was hostile towards his extended family. **PW9** described the Accused as a person who "hates" his family members "*very insulting*" (sic) and unapproachable.

77. **PW3**, the Accused's own brother stated in his evidence that on one occasion when the family reported to the police the Accused's attempt to demolish structures on the town plot, the police merely advised them to "*go to Court*". **PW12**, the DCIO Ngong between 2019 and 2021 admitted that the threats made prior to the murder had been reported but no investigations had been carried out by the police. Indeed, it was not until one month had elapsed since the murder of the deceased that the Accused was arrested. He told the court in his own evidence that he had never been summoned by police or questioned prior to his arrest concerning the murder.

78. Faced with the evidence of his extended family, concerning threats to kill and other unlawful actions in pressing his claim to the town plot, the Accused maintained in his evidence that he had a good relationship with all his relatives whom he freely visited in their respective homes. Remarkably, his defence statement which focused primarily on his alibi made no express reference to the allegations of threats especially to the deceased's life and other adverse actions attributed to him in the testimonies of his kin.

79. When these testimonies were put to him under cross-examination, he dismissed them as untrue, and in re-examination reiterated that he had a good relationship with his relatives and the only reason he could give for their accusations was the dispute over the town plot. There was no evidence that in the period prior to and during the dispute over the town plot the deceased or members of his family complained regarding any other third party threats to his life or enmity with a third party. Among his siblings, it seemed that he had been singled out for extreme acts of aggression beyond threats.

80. And while there was no direct evidence identifying the arsonists, the timing of the arson incidents almost concurrently with the Accused's attempts to evict the deceased, to demolish premises on the town plot and repeated threats against the deceased casts a strong suspicion against the Accused as the perpetrator. The arson incidents cannot be mere coincidences, separate from other similar acts of aggression perpetrated against the deceased and his family in the same period; a common idiom states that lightning does not strike the same tree twice.

81. From the evidence of his close family members **PW1** and **PW2**, the deceased, described by **PW9** as a peaceful man, was aged 70 years at death, retired and living a relatively quiet life on his farm at Kibiko B. He was evidently close to his wife, **PW1** and if he had any other dispute with a third party that was serious enough to constitute a threat to his life, **PW1** would have known about it. So would have his brothers, with whom he evidently had a good relationship. No such evidence emerged at the trial. As executed and considering events preceding it, the deceased's murder was not a random criminal act but a premeditated act carried out with finality.

82. During cross-examination, the Accused was hard pressed to explain the fact he did not visit the home of the deceased after he learned of the death, whose macabre details must have been the talk of the rural **Kibiko B** area, or attend the funeral, as asserted by **PW3** and other relatives in their testimonies. Regarding the latter stating that he attended the service, not the funeral, this splitting of hairs signaling to the court an adeptness by the Accused to adjust his evidence as he went along.

83. Another example of this apparent lack of candour came out concerning his opening statement in his defence stating that "*I am Jimmy Njenga Githiga. I am an assistant chief Manyatta sub-location . I am also a farmer*". This despite unchallenged evidence by **PW3** that as of May 2022, the Accused had already retired. When challenged in cross-examination, the Accused said "*I am former chief Manyatta*".

84. In the court's assessment, the prosecution evidence of events preceding and surrounding the death of the deceased is consistent and believable . And based on the timing of events, the direct and

indirect threats by the Accused to kill, particularly the deceased whom he apparently viewed as the main antagonist due to his continued physical occupation of the town plot, attempts to evict **PW1** and other unlawful activities such as the two arson incidents at the home of the deceased, were clearly all geared towards the Accused's assertion of his claim to the town plot. And also intended to intimidate the other claimants by unorthodox means. Evidently, the efforts failed as the deceased stayed put, refusing to leave the town plot even after the burning down of his house in 2018 and attempted arson in June 2018.

85. From this evidence, it is possible to trace the progression and sequence of events starting with the Accused laying a disputed claim to the town plot, attempts to enforce the claim via repeated verbal threats to life against contenders and especially the deceased, attempts at eviction of **PW1** and in turn the deceased, acts of arson against the couple, and eventually, the brutal murder of the deceased, in actualising previous threats to kill. The horrific manner of his killing further demonstrates the object of the murder; to completely eliminate a key contender to the disputed property and

strike fear in the hearts of others in the extended family contending for the town plot, consistent with earlier verbal threats to similar effect. The Accused in the court's view by his proven prior conduct had evinced an intention to use any means available to secure his asserted entitlement to the town plot.

86. As earlier observed, the prosecution case rests on circumstantial evidence; none of the witnesses were present during the fatal assault on the deceased. Through **PW9**, the prosecution tendered evidence on the sighting of two strange men by the witness one day before the murder, said to have been walking near her shamba, and around the homes of her relatives next to hers. And information received by her from her 11 year old son **Peter**, on the next day in the afternoon, that while returning from an errand, he had seen two men seated near the deceased's home, one of whom carried a knife and had what appeared to be a wound on his hand. Unfortunately, **Peter** was not called as a witness, and at best **PW9's** hearsay evidence suggests what is already clear from other evidence, namely, that the murder in this case was committed by more than one person and during daytime on 5.08.2019.

87. The fact that the murderers dared to attack the deceased during the day, in a home within a village setting, surrounded by homes of his relatives, including the Accused himself, suggests that the attackers had information, firstly, about the location of his home, his daily routine, and secondly, that he was all alone at that time of the day. Such information would very likely be known to close relatives and or neighbours, and not strangers, unless disclosed to them. It is pertinent here that the Accused and deceased, together with other members of the family resided within **Kibiko-B**. Which stranger was intent on murdering the deceased in the most gruesome manner, and why?

88. As earlier indicated, apart from the Accused who uttered repeated threats on his life and committed several aggressive acts against him, the deceased did not appear to have had any dispute with any third party as to justify his summary execution; nothing was stolen from what appears to be his modest *mabati* home during the murder.

89. Although no witness claimed to have seen the Accused at the scene of murder, the Accused raised an elaborate alibi defence supported by **DW2**, to the effect that on the material date, he left his home, located a few kilometers from the deceased's home and went to his office before proceeding to a baraza at Ngong Hills where he remained from 9:00 am to 5:00pm. He produced minutes of the said meeting as **DExh. 1**, while **DW2** claimed to have attended the meeting. It is trite law that an accused has no burden of proving his alibi defence, and the onus of disproving such alibi rests on the prosecution.

90. In the case of **Kiarie Vs Republic [1984] KLR** the Court of Appeal rendered itself in the following terms:

**"An alibi raises a specific defence and an accused person who puts forward an alibi as an answer to a charge does not in law thereby assume any burden of proving that answer and it is sufficient if an alibi introduces into the mind of a court a doubt that is not unreasonable. The judge had erred in accepting the**

**trial magistrate's finding on the alibi because the finding was not supported by any reasons."**

See also **Ssentale vs Uganda (1968) EA 365** and **Wang'ombe vs Republic (1976-80)1 KLR 1683**.

91. The court, guided by these authorities considered the alibi herein in light of the prosecution case. For starters, the prosecution evidence earlier analysed consistently points to the Accused as the person who wanted the deceased dead, as manifested in repeated uttered threats to kill and other acts of aggression against him, and the mastermind behind the gruesome killing of the deceased. He was shown to be the person who orchestrated an aggressive campaign of intimidation against the deceased, including eviction attempts and arson at his home. The motive being to dispossess the deceased of the premises at the town plot thus eliminating a key contestant to his claim to the town plot and to secure it for his exclusive use.

92. The alibi defence was challenged by the prosecution at the trial. The Accused admitted in cross-examination that **DEx. 1** was prepared by one **James Sululu**, the chairman of the Ngong Hills

Residents but who inexplicably was not called as a witness. Secondly, the list of named attendees thereon was unsigned. Thirdly, the purported signatory (chairman) of the minutes and date of the signing of the minutes were not indicated. Further, it appears unlikely to the court that the minutes were recorded and typed for signature on the same date of the meeting as the document purports. The Accused's own signature and official stamp endorsed thereon purports confirmation of the minutes on the same date of the meeting.

93. Finally, while it was purported that the meeting was primarily called to discuss security matters and indeed the minutes refer to such issues, the Accused testified that he was the only government representative present, while on his part **DW1**, whose identity could not be ascertained as he had no identification documents on him, claimed that Kenya Forest Service personnel were in attendance.

94. These issues raised by the prosecution during the cross-examination of the Accused and his witness, and in submissions cast

doubt on the veracity of the document and its contents, which as a minimum, should have been produced by the maker.

95. In **Victor Mwendwa Mulinge v Republic [2014] eKLR Criminal Appeal 357 of 2012** this Court stated that the burden of proving if an alibi is false rests on the prosecution. The Court, relying on **Karanja v Republic [1983] KLR 501** further expressed itself as follows:

**"...a trial court may, in testing a defence of alibi and in weighing it with all the other evidence to see if the accused's guilt is established beyond all reasonable doubt, take into account the fact that he had not put forward his defence of alibi at an early stage in the case so that it can be tested by those responsible for investigation and thereby prevent any suggestion that the defence was an afterthought."**

96. More significantly, the issue of the purported meeting was raised only once during the prosecution case, when the defence suggested to **PW2** that on the date of the offence the Accused was

engaged *“in a meeting with the DO (District Officer) and other chiefs settling land disputes”*. The brief minutes produced by the Accused as **DEXh.1** certainly make no reference to the presence of such government officials or business as transacted in the purported meeting of 5.08.2019.

97. The Accused, while admitting during cross-examination that he was in possession at the time of his arrest of **D.Exh. 1**, was unable to explain why he did not furnish it to the police at the earliest opportunity and as he was represented by counsel, why notice of his intended alibi defence was not given early during the trial. In the court’s view, the evidence regarding this purported meeting raises more questions than answers and the alibi appears an afterthought and false.

98. Here, the inculpatory circumstances are especially augmented by the fact that the Accused person despite residing in the same village as the deceased- **Kibiko B**- inexplicably failed to visit the family of his deceased step-brother to commiserate with them following the murder, and did not attend the funeral. This conduct,

considered in light of other evidence, appears inconsistent with his innocence, and on the contrary points to guilty knowledge on his part.

99. The prosecution evidence in the court's considered view was compelling, and displaces the Accused's defence which is inherently contradictory, in simultaneously asserting a good relationship with his family while accusing the same family members of making false accusations against him for a grave offence. His further claim was that he was waiting for the resolution of the succession dispute in court. The evidence by prosecution witnesses demonstrates otherwise; he was directly and indirectly engaged in unlawful acts of verbal and physical aggression aimed at intimidating his extended family, and in particular the deceased, into giving up any claims to the town plot.

100. In addition to the foregoing was his false statements in his defence, despite multiple accounts to the contrary, that he had a good relationship with his extended family, including the deceased and the patently false alibi. In light of the evidence mounted by the

prosecution, the Accused's defence was false, and his alibi a fabrication *ex facie*, intended as a cover-up of his involvement in the death of his step-brother.

101. In the case of **Ernest Abanga Alias Onyango Vs Republic, CR. A NO.32 of 1990(UR)**, the Court of Appeal observed that :

**“In RAFAERI MUNYA alias RAFAERI KIBUKA V REGINAM (1953) 20 EACA 226, the appellant there was convicted of murder and the case against him was mainly based on circumstantial evidence. In his sworn evidence at the trial, he made some denials which were obviously false. It was held that:**

**The force of suspicious circumstances is augmented where the person accused attempts no explanation of facts which he may reasonably be expected to be able and interested to explain; false, incredible or contradictory statements given by way of explanation, if disapproved or disbelieved become of substantive inculpatory effect”.**

**This case in our view, does not in any way go against the basic legal principle that the burden of proving a criminal charge beyond doubt is solely and squarely upon the prosecution. But its basic holding, namely that when an accused person tells an obvious and deliberate lie which is disproved or disbelieved, then such a lie is capable of providing corroboration to other independent evidence available".**

102. In **Francisca Ngina Kagiri v Republic [2009] KECA 205 (KLR)**, a case premised on comparable circumstantial evidence, the Court of Appeal stated as follows:

**'As to the appellant's linkage to the murder, her own conduct both before and after the death of the deceased points to an elaborate plan on her part to cover up her involvement in the death.** For example, immediately after the deceased disappearance, she did phone close relatives and friends of the deceased asking them to call the deceased on his cell phone yet the deceased's vital documents and items such as his ID, ATM card and the cell phone were

**traced to the deceased's bedroom where the appellant had access. The items were on a stool. .... She had also complained to the father of the deceased, his brother and one friend about his conduct just a day before his disappearance. She had complained that the deceased's relationship with PW9 was a matter of great concern to her. She had through friends and relatives of the deceased sounded a warning to the deceased. ....**

**The appellant's conduct before the disappearance of the deceased is, in our view, the motive of committing the crime due to the deceased's extra marital affair with Wanjiru (PW9)..... It follows therefore the only person who had the motive to kill, the opportunity and access to the house where the deceased was sleeping on the fateful night was the appellant and by extension others not before the court, who shared with her a common intention to kill the deceased.**

**We have evaluated the evidence as above, and the evidence on record, in our view, points irresistibly to the appellant's**

guilt and the evidence tendered is certainly beyond suspicion. While reaching this conclusion, we are, of course, aware of a number of this Court's decisions concerning conviction based exclusively on circumstantial evidence. In the case of **MUCHENE v REPUBLIC** [2002] 2 KLR 367 this Court held.....

**We find that the prosecution has proved beyond reasonable doubt such inculpatory facts as the appellant's attempt to cover up by her reluctance to report to the police at the earliest opportunity; attempts to persuade the workers not to report the tracing of the body; the anger she expressed after the discovery of the body; her conversation with the son on phone when she lamented about the discovery of the body; the proof of prior warnings by her conveyed through relatives and to the deceased and the overwhelming evidence of a strained relationship with the deceased prior to his disappearance due to his extra marital relationship with a girlfriend; point to the guilt of the appellant. We think all these facts are not compatible with the innocence of the**

**appellant. They are also not capable of explanation upon any other reasonable hypothesis than that of the appellant's guilt.....**

**Instead, what emerges from the evidence as a whole is a premeditated plan, and a common intention to kill the deceased by the appellant and others not before the Court. We think that no other persons could have gained access to the house without being aided or assisted by the appellant in furtherance of the common intention, which was to kill the deceased. In law, the appellant need not have pulled the trigger or used a panga or any other instrument consistent to the injuries that caused the death. It was enough in our view, for the appellant to have been part of a common intention. The evidence as a whole discloses such a common intention."**

103. In the court's considered view, the proven conduct of the Accused before the murder of the deceased, and after his death points unerringly to the involvement of the Accused. In other words,

applying the test in **Sawe's** case (supra), the court is of the view that the inculpatory facts here are incompatible with the innocence of the Accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. And based on the circumstances surrounding the murder of the deceased, the proven conduct of the Accused towards him prior to his death, and after his death, there are no co-existing circumstances capable of destroying the inference of guilt on the part of the Accused.

104. Similarly in this case, the prosecution evidence viewed in its totality, proves beyond reasonable doubt the fact and cause of death, and malice aforethought on the part of the Accused, both pre-existing as disclosed in his uttered intentions and hostile actions towards the deceased, and as disclosed by the nature of injuries inflicted on the deceased. And points unerringly to his involvement, in conjunction with others, in the eventual murder of the deceased, from which he alone stood to benefit.

105. As held in **Ngina's** case above, the Accused need not have been the one who wielded the panga or any other instrument

consistent with the injuries that caused the death of the deceased herein. It was enough for the Accused to have been part of the common intention disclosed in the evidence. The court having considered the prosecution evidence in total finds that it proves that beyond reasonable doubt that the Accused is a principal offender in terms of Section 20(1) of the Penal Code and will proceed to convict him as charged.

**DELIVERED AND SIGNED ELECTRONICALLY AT KAJIADO ON THIS  
4<sup>TH</sup> DAY OF DECEMBER 2025.**

**C. MEOLI**

**JUDGE**

**In the presence of:**

**For the State: Mr. Kilunda**

**For the Accused: Mr. Ombati**

**Accused: Present**

**C/A: Lepatei**