

**IN THE COURT OF
APPEAL AT
NYERI**

**(CORAM: M'INOTI, ALI-ARONI & GACHOKA,
JJ.A.) CRIMINAL APPEALS NO. 62, 63, 64 & 65
OF 2020**

JOHN PETER APPELLANT	BETWEEN	MBAABU.....1ST
NJAGI.....2ND		KENNETH APPELLANT
CAROLINE APPELLANT		KAMBURA.....3RD
VINCENT MURIUKI.....4TH		REPUBLIC
APPELLANT AND		
.....		
RESPONDENT		

in
HCCRC No. 6 of 2016)

JUDGMENT OF THE COURT

1. The appellants, John Peter Mbaabu, Kenneth Njagi, Caroline Kambura and Vincent Muriuki, were jointly charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence were that on 30th July 2016 at Gichwe village Kithitu sub-location within Tharaka Nithi County, the appellants murdered Abinja Thara Muchiri.

2. The appellants were arraigned before the Chuka High Court in

HCCRC No. 6 of 2016. They entered a plea of 'not guilty'.
After

a full trial, the appellants were convicted as charged. They were each sentenced to serve 35 years imprisonment. It is those findings that have galvanized the present appeal.

3. The 1st, 2nd and 3rd appellants filed separate notices of appeal dated 13th February 2020. The 4th appellant, on his part, filed a notice of appeal dated 17th February 2020. The appellants also filed individual undated grounds of appeal raising a combined total of 27 grounds disputing the findings of the learned judge.
4. The appeals were consolidated and we have taken the liberty to summarize those grounds as follows: that the prosecution failed to prove the ingredients of the offence of murder; that the identification of the perpetrators was not satisfactory as the offence occurred at night; and that the prosecution's evidence was marred with contradictions, inconsistencies, afterthoughts, discrepancies, incredibility and unreliability.
5. The appellants continued that that their defences were rejected without sufficient reason; that the trial court wrongly interpreted the words "*umundi ni umundi*"; that the investigations done were shoddy; that the prosecution

witnesses were not only untrustworthy but also framed the

appellants, as they did not commit the offence; that crucial witnesses were not called to the stand; and that the 3rd appellant was only dragged into the proceedings as a wife of the 1st appellant while the 4th appellant was his casual employee. For those reasons, the appellants prayed that their appeals be allowed, their convictions quashed and their sentences set aside.

6. The appeal was heard virtually on 2nd September 2025 in the presence of the appellants. The 1st and 2nd appellants were jointly represented by learned counsel Mr. Mshila, while learned counsel Ms. Ndiangui was present for the 3rd and 4th appellants. On its part, the respondent was represented by Ms. Mengo, Principal Prosecution Counsel. The parties relied on their respective written submissions to argue the appeal.

7. The 1st and 2nd appellants' written submissions and list of authorities dated 16th June 2025 framed six issues for determination. They commenced by arguing that they were not properly identified as the perpetrators of the offence. This is because the offence occurred at night when there was a high probability of poor visibility. Furthermore, the

only available light was that of a lamp which did not shine
where the offence

took place, severely compromising the identity of the offenders. They then submitted that the evidence of the prosecution, particularly that of **PW1**, **PW2** and **PW4**, was flawed with contradictions and inconsistencies.

8. Reproducing their defences, the 1st and 2nd appellants submitted that they were improperly rejected, yet they gave credible accounts regarding their whereabouts at the time of the incident and the circumstances of their arrest. Citing several decisions, they submitted that the prosecution failed to discharge its burden of proof to the required standard in proving that the elements of murder were all conjunctively established. In that regard, they opined that the prosecution failed to establish that the 1st and 2nd appellants were the perpetrators and possessed malice aforethought.

9. Penultimately, the 1st and 2nd appellants submitted that the trial judge failed to properly interpret the words stated in the local dialect. In their view, an independent translator ought to have been called to translate the words properly. They submitted that the trial judge was not impartial, with the resultant effect of infringing on their right to a fair trial.

They questioned the reliability of the eyewitnesses, stating that it is

not conceivable that they did not do anything and instead watched their deceased relative being murdered without seeking help or raising an alarm.

10. Lastly, they posited that the prosecution's evidence was marred with loopholes because some murder weapons were neither recovered nor submitted in evidence. Further, the one machete that was recovered, though had blood stains, was never taken for DNA analysis. Further, they questioned why the government analyst was not summoned to adduce evidence or explain why he never submitted his report. For those reasons, they prayed that their appeals be allowed.

11. The 3rd and 4th appellants filed joint written submissions dated 23rd May 2025. Similarly, they augmented their innocence by submitting that the conditions surrounding the occurrence of the offence could not conclusively identify them as the perpetrators. It was also not established to what degree the light that shone from the lamp in the house spread since the deceased's body was found 15 meters away from the houses where the eye witnesses were hiding.

12. In addition, the torch allegedly used by the 3rd appellant was not adduced in evidence. In fact, they continued, this was the reason the witnesses were unable to describe the apparel the assailants had worn that night. Though some of the witnesses were hiding in the banana plantations, they argued that it was not clear what distance they hid away from the crime scene, thereby casting doubt whether they had sight when the offence took place.
13. The 3rd and 4th appellants continued that though some items were recovered in the 1st appellant's house, no inventory was prepared. Either way, they were neither cross-referenced by the witnesses in their testimonies nor submitted for forensic analysis. They further urged this Court to consider that the 3rd appellant addressed the issue of the clothes that were produced at trial. She explained that the clothes were brought to the station by one Nyaga as belonging to Nkonge Karuru, a suspect who was lynched by the public on 31st July 2016. For those reasons they prayed that their appeals be allowed.
14. The respondent opposed the appeal. Ms. Mengo filed written submissions dated 22nd May 2025. She abridged the

evidence laid out by the prosecution and the grounds raised by the

appellants impugning the trial court's findings and submitted that the direct evidence of **PW1**, **PW2** and **PW4**, as well as the circumstantial evidence adduced before the trial court, conclusively left no doubt that the appellants committed the offence of murder.

15. On the ingredient of malice aforethought, counsel submitted that it was proved to the required standard, taking into account that the appellants viciously attacked the deceased with machetes, and inflicted fatal injuries on her. This clearly demonstrated that they knew or were aware that their actions would lead to serious injuries that could cause the death of the deceased. Ms. Mengo further argued that the appellants were well known to **PW1**, **PW2** and **PW4** thereby establishing their identity beyond any shadow of a doubt. This was further fortified by the fact that they were identified at the scene with the aid of the lantern light and recognized through their voices, as they were **PW1**, **PW2** and **PW4**'s neighbours.

16. Ms. Mengo added that the appellants' defences were considered and rightly rejected. She explained that **PW1** did not scream as she was afraid. Additionally, there were

no contradictions in the evidence presented by the prosecution

and the investigations were not shoddy as argued by the appellants. On the contrary, all the ingredients of the offence of murder were proved beyond reasonable doubt. For those reasons, Miss. Mengo prayed that the appeals be dismissed.

17. As a first appellate court, our bounden duty is to reappraise and re-evaluate the evidence and come to our own independent findings while giving allowance to the fact that, unlike the trial judge, we did not have the advantage of hearing and seeing the witnesses [See ***Kiilu & Another vs. Republic*** [2005] KLR].
18. The record before us has captured the evidence as follows: **PW1** Purity Kaari was a child of the deceased and the sister of **PW2** Peter Gitonga. The 1st appellant is **PW1** and **PW2**'s cousin. He is married to the 3rd appellant. The 2nd appellant is their nephew, while the 4th appellant was employed by the 1st appellant. **PW1**'s evidence was that on the night of 30th July 2016, she was at her home heading to sleep at 11:40 p.m. when she heard a motorcycle stop outside the 1st appellant's house.
19. At the homestead, **PW1** was living in her house while the

deceased was also living in her house within the homestead.

The lights in **PW1**'s house were off as she was preparing to go to bed. The 1st appellant lived within the same compound. **PW1** heard the 1st appellant say "*umundi ni umundi*" translated to mean "let us fight". Thereafter, **PW1** heard some stones being thrown at the roof of her house. A similar incident had occurred about a week ago and was reported to the police station by **PW1**.

20. **PW1** then heard her deceased mother's house door being knocked so hard that it prompted the deceased to start screaming. Fleeing for safety, **PW1** jumped out of her house window and went into hiding in the rabbit's kennel. It was located directly opposite the deceased's house and was approximately 2 - 3 meters from the crime scene. There were also banana plantations that were approximately 10 - 15 metres away from the crime scene. She saw all the appellants together with Mutembei and Nkonge, who she recognized as her neighbours.

21. **PW1** saw the 1st appellant and Nkonge push the deceased's door open. The 1st appellant was wearing dull trousers and a light blue jacket. **PW1** also saw Mutembei, who remained outside. **PW1** saw them clearly because of the lantern

light

emanating from the deceased's house. The 3rd appellant, also present, shone the torchlight on the deceased. Suddenly, **PW1** saw the appellant and Nkonge drag the deceased out of her house. She then saw the 1st appellant cut the deceased on the head with a machete and then stepped on her. In the process, the deceased fell.

22. While the 1st appellant was cutting the deceased, **PW1** recalled him telling Nkonge: "*Bamo Fanya kazi*". Translating the dialect, **PW1** testified that "*bamo*" meant a person of the same age. Nkonge joined in and started cutting the deceased. Mutembei and the 4th appellant then proceeded to **PW1**'s house and broke down the door. **PW1** also saw the 2nd appellant enter her house. He thereafter returned to the crime scene and attacked the deceased with a machete.

23. During the ordeal, the deceased pleaded for mercy, reminding the 1st appellant that she had previously taken care of him when he was indisposed. However, the 1st appellant insulted the deceased and continued to assault her. The 3rd appellant then took the machete from the 1st appellant and cut the deceased on the leg and ankle,

stating that she also wanted to play a part. She was wearing a skirt and a brown jumper. **PW1**

recognized her voice. After the ordeal, which lasted about 10
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15 minutes, the assailants retreated to the 1st appellant's home. She recalled that all the assailants except the 3rd appellant had their own machete. She further testified that she rushed to her house and called **PW2**. Thereafter, **PW1**, **PW2**, **PW4** and Maurice Mawira, emerged from their hiding spots and found the deceased lying in a pool of blood.

24. **PW1** thereafter called the assistant chief Mr. Dominic Murithi, and informed him of what had transpired. They were later joined and surrounded by neighbours. At 6:00 a.m., police officers from Ntume police station arrived and collected the deceased's body. Thereafter, the 1st and 3rd appellants were arrested while the 2nd and 4th appellants were arrested on a later date. She later learned that Nkonge was lynched by area residents.

25. **PW1** testified that her family never held a grudge against the 1st appellant. In cross examination, she denied being an illicit brewer or partaking in drugs.

26. **PW2** corroborated that he was **PW1**'s brother and the deceased's son. He testified that he was at his home that

fateful

night. At around 11. 50 p.m., **PW2** heard a stone hitting the roof of **PW1**'s house. He also heard the sound of a motorbike. He had come to visit his mother. He had house in a shared compound with the deceased. He was living together with his nephew Maurice Mawira and **PW4**.

27. **PW2** recalled that the impact of the stone on the roof was loud.

Together with Maurice Mawira and **PW4**, they went outside to check the source of the noise. They found some people at the gate, who began throwing stones at them. This prompted them to hide behind a nearby banana plantation, which was 10 meters away. They feared for their lives.

28. While hiding, **PW2**, saw Mutembei alias Karuru breaking down the door of the deceased's house. The 3rd appellant, the 1st appellant's wife, held a torch that shone through the deceased's house. There was also light emanating from a lamp in the deceased's house. That was when he also saw the 1st appellant, who is his cousin, standing next to Mutembei. He also saw Nkonge as well as the 4th appellant, who was an employee of the 1st appellant. The 2nd appellant and Vincent stood near **PW1**'s house. These were the people whom he had seen earlier at the gate. They were

armed with machetes.

29. **PW2** saw the 1st appellant, Mutembei and Nkonge enter the deceased's house by force. They emerged with his mother, stepping on her and she fell. He added that the 1st appellant was their cousin, while the 2nd appellant was their relative. They began to inflict cuts on her with a machete, prompting the deceased to scream. The deceased asked the 1st appellant why they wanted to kill her and if there was nothing good she had ever done for him. He responded saying: "*Nakuuwa kabisa.*"
30. **PW2**'s evidence was that they all cut the deceased, with the 3rd appellant being the last person to cut her legs before leaving her for dead. He heard the 3rd appellant stating that she also needed to do something before inflicting cut wounds on the deceased. Thereafter, they went to the 1st appellant's house. **PW2** explained that he took no action out of fear and furthermore, could not defend himself.
31. After the ordeal that lasted 25 minutes, **PW2** saw some light emerging from the rabbit house. He found **PW1** trying to call her with her mobile phone. Later, **PW1** called the assistant chief. They found their mother lying in a pool of blood and were

later joined by neighbours. **PW2** testified that the land they occupied was to be distributed to all family members. He testified that he did not witness a quarrel the deceased had with the 1st and 3rd appellants a week before the incident.

32. Prior to the incident, **PW2** recalled that Nkonge used to visit the 1st appellant. He was emphatic that **PW1** never brought criminals to the homestead. He also recalled the 1st appellant being an illicit brewer. He remembered that since the death of his father, the 1st and 3rd appellants harbored ill feelings towards his mother. In fact, the 1st appellant had previously insulted his mother. That incident was reported at the police station. He testified that Nkonge was killed by area residents and Mutembei was still at large. He denied that they were accomplices because they failed to raise an alarm.

33. **PW3** Dr. Justus Kitili conducted the postmortem on the deceased on 9th August 2016 at 10:00 a.m. He observed that the deceased suffered cuts on the back of her head. She had blood oozing from her mouth and nostrils and had a deep cut on her thigh. She had suffered a skull fracture and a blood clot on the occipital part of her brain. **PW3**

formed the opinion that

the deceased died from a severe injury inflicted by a sharp object. The postmortem report was produced in evidence.

34. **PW4**'s evidence was that on 30th July 2016 at 11:00 p.m., he was at home when he heard stones being thrown on the roofs of their houses. He was with **PW2**, his employer and Maurice Mawira. On investigation, they found people throwing stones while armed with machetes. They were six in number. They also had spotlights enabling **PW4** to identify them.
35. Afraid that they would be attacked, **PW4** and company went into hiding in a nearby banana plantation. They hid in different places. He saw the 1st appellant and Mutembei breaking down the deceased's door. They then dragged her outside and started cutting her with their machetes. He heard the deceased ask: *"John, you are killing me?"* He knew the appellant and recognized his voice. He then saw the 2nd appellant going to **PW1**'s house to look for her. After five of the assailants had finished cutting the deceased, the 3rd appellant took one machete and said: *"Wacha nikate akikufa."* She then cut the deceased. He recognized the 3rd appellant as the 1st appellant's wife.

36. After the incident, the six assailants left and went home. **PW4** emerged from hiding together with **PW2** and Maurice Mawira. They found the deceased lifeless. **PW1** called the assistant chief. The police came later and collected the deceased's body. **PW4** stated that he witnessed the whole incident with the aid of light emanating from the lantern lamp in the deceased's house. Furthermore, the 3rd appellant shone a torch in the direction of the deceased's house. He remembered that during the ordeal, the 1st appellant said: "*leo ni leo.*" while kicking the deceased.
37. **PW4**, in cross examination, denied that he was the deceased's lover and dealt with illegal trading. He added that he did not know why the deceased was murdered and wasn't aware that some people had threatened **PW1**. He also added that the 2nd appellant and 4th appellant, whom he recognized by voice, also tried to access **PW1**'s house looking for her.
38. **PW5** CIP Christopher Wahariya, the investigating officer, testified that they proceeded to the scene at around 4:00 a.m. following the report. He proceeded with two of his colleagues and found the deceased lying outside her house

in a pool of blood. The body had multiple injuries. The body was identified

by **PW1** and **PW2**, who also gave them information as to who the suspects were.

39. **PW5** found the 1st and 3rd appellants in their home. He arrested them and recovered blood-stained clothes, that is, a dark grey pair of trousers, a jacket believed to belong to the 1st appellant, and a blood-stained machete. They were produced in evidence. The 4th appellant was arrested in the midst of the crowd at the deceased's home. The deceased's body was taken to Chuka mortuary as the 1st, 3rd and 4th appellants were placed in police cells.

40. During the day at 2:00 p.m., **PW5** returned to the crime scene.

He found the 2nd appellant, who had been cornered by an angry mob. He had been attacked and sustained multiple injuries. He was taken to Chuka Hospital for treatment and was admitted for one week. Meanwhile, Nkonge was lynched and died on 31st July 2016. He added that the exhibits were taken to the government chemist for forensic analysis. It was his understanding during his investigations that a land dispute had arisen between the 1st appellant and the deceased and was the motive for the murder.

41. At the close of the prosecution's case, the trial court formed the opinion that the prosecution had established a *prima facie* case against the appellants. They were placed on their defences and gave sworn evidence.
42. The 1st appellant, **DW1**, confirmed that the 2nd appellant was a neighbour, the 3rd appellant was his wife while the 4th appellant was his casual labourer. He also confirmed that the deceased was his aunt, having married his father's brother. He was **PW1** and **PW2**'s cousin. He maintained his innocence by stating that on 30th July 2016, he was at home nursing an injured leg. His cousin's wife woke him at 4:00 a.m. when he was arrested by police officers. During his arrest, he was accused by **PW1** and **PW2** of murdering the deceased.
43. **DW1** testified that he held no grudge against the deceased, who was like a mother to him. He lived 200 meters away from her house, but his house was burnt down by **PW1** and **PW2** after the false accusations were made against him. He accused **PW1** of framing him because they differed on account of her propensity to bring criminals to her home. One of them was Morris Gitonga. He recalled that the said

Morris Gitonga was eventually murdered. He suggested that the deceased may

have been murdered by the people **PW1** invited to her home. He denied hearing any screams that night. He also added that in April 2016, **PW1** was attacked. He denied that the police recovered any items at his home.

44. **DW2**, the 3rd appellant, denied committing the offence. She described the deceased as a mother figure to her during her lifetime. She held no grudge against her nor **PW1** & **PW2**, her husband's cousins. She similarly confirmed that **DW1** was her husband, the 2nd appellant was a neighbour and the 4th appellant was their employee. She testified that she was at home on the fateful night and was only made aware of the deceased's death when she was arrested the following morning.
45. **DW2** added that she did not hear anyone scream that night.

She put forward that if indeed **PW1** and **PW2** saw her murdering the deceased that night, they ought to have raised an alarm. Giving the circumstances leading to her arrest, she testified that police officers came to their home and informed them that they were under arrest, together with her husband, for killing the deceased person. She was surprised. She denied that the police recovered any

exhibits. She advanced that clothes belonging to Nkonge were brought to the police station

but he was dead. She emphasized that they all lived in harmony with the deceased, **PW1** and **PW2**.

46. **DW3**, the 2nd appellant, testified that on 30th July 2016, he spent the night at his house having worked the entire day. He was the deceased's neighbour. He denied being at the crime scene as testified by **PW1**. On 31st July 2016, while on his way back from the shop, **DW3** met an irate crowd that assaulted him. He denied committing the offence. He added that he had a secret love affair with **PW1** from 2015 to 2016.

47. **DW4**, the 4th appellant, maintained that he worked on 30th July 2016 for the 1st appellant and was arrested on 31st July 2016 while working for the 1st appellant. He stated that he was home asleep with his brother. He opined that the only reason he was arrested was that he worked for **DW1**.

48. We have carefully considered this appeal. For the prosecution to sustain a conviction on a charge of murder, the following crucial ingredients must be established: the death of the deceased; the cause of death; the death of the deceased was caused by an unlawful act or omission caused by the accused person(s); and that the accused

person(s) had malice

aforethought (See **Nyambura & Others vs. Republic** [2001]

KLR 355).

49. On the deceased's death and its cause, **PW3** testified that he conducted the autopsy on the deceased person Abinja Thara on 9th August 2016 at 10:00 a.m. The body was identified by **PW1** and **PW2**, the deceased's children. According to his postmortem report, the deceased suffered cuts on the back of her head. She had blood oozing from her mouth and nostrils and had a deep cut on her thigh. She suffered a skull fracture and blood clot on the occipital part of her brain. His medical opinion was that the deceased died from a severe injury inflicted by a sharp object. That proves the death of the deceased and its cause to the required standard.

50. The crux of the appeal is whether an unlawful act or omission by the appellants herein caused the death of the deceased. It is not in doubt that the deceased was subjected to a very vicious attack and no human being should be subjected to this kind of painful death. The question that we must answer is whether the appellants were properly identified and whether the evidence

established that it is the appellants who committed this heinous crime. Once we answer that question,

it will dispose of the main grounds that were raised by the appellants.

51. The prosecution relied on the direct eyewitness accounts of **PW1**, **PW2** and **PW4**. We have already summarized that evidence, but at the risk of repetition, we shall revisit that evidence when necessary. The appellants' main argument was that since it was dark, the witnesses could not identify them beyond peradventure. In fact, it was their submission that the light was not bright enough. We find that the argument must fail for two reasons. Firstly, it was an afterthought as the issue of the intensity of the light was never challenged in evidence. Secondly, all witnesses explained that the lantern light sufficiently illuminated the scene where the attack was taking place to enable **PW1**, **PW2** and **PW4** to recognize them comprehensively. Furthermore, the 3rd appellant's torch also gave light to the crime scene.

52. It is also important to point out that the witnesses were all near the murder scene. They all saw the appellants inflict stab wounds on the deceased, which, as **PW3** testified, ultimately led to her death. The appellants inflicted several

injuries on the deceased, leading to her brutal death. When
the deceased

pleaded for mercy, none of them stopped assaulting her. It is common ground that the appellants were well known to **PW1**, **PW2**, and **PW4**. All these persons were familiar to each other either as neighbors, employees or relatives. This was therefore a case of recognition rather than identification of a stranger. They all knew each other before the events of that night, which lasted 10 – 25 minutes. The 1st and 3rd appellants were also heard talking and their voices were recognized by **PW1**, **PW2** and **PW4**.

53. Several words were uttered by the appellants during the commission of the offence. Those utterances enabled **PW1**, **PW2** and **PW4** to recognize their voices. Though all witnesses were hiding in separate areas surrounding the crime scene, they, by and large, corroborated the circumstances leading up to the commission of the crime.

54. We are thus satisfied, as with the trial judge, that the evidence was consistent and not contradictory as submitted by the appellants. The evidence clearly demonstrates that the appellants committed an unlawful act leading to the deceased's death. Clearly, they were on a preplanned mission to eliminate the deceased.

55. It must be pointed out that the eyewitnesses were all afraid and hid in silence. Though the appellants posited that they ought to have screamed, they cannot be faulted for not raising an alarm and certainly cannot be accused as accomplices absent cogent evidence. Indeed, **PW2** and **PW4** were chased away by the appellants when they first went to check the source of the noise that they had heard and thus nothing turns on the fact that they later watched the assault silently in horror.

56. The record shows that **PW1**, **PW2**, and **PW4** were subjected to a rigorous cross-examination but their evidence remained unshaken. The prosecution's evidence remained watertight. We are satisfied that the witnesses greatly corroborated the evidence confirming that the appellants unlawfully inflicted fatal wounds upon the deceased. They were properly identified and recognized as relatives and neighbours. This was done with the help of the lantern lamp, the torch light and the period the incident lasted.

57. The appellants also challenged the evidence of the prosecution as having contradictions that rendered the

conviction unsafe. However, the contradictions in the evidence of the prosecution

were too minor and did not occasion a miscarriage of justice. They were not material as to affect the substance of the prosecution's case. [See **Twehangane Alfred vs. Uganda,**

Criminal Appeal No. 139 of 2001, [2003) UGCA]. That argument fails and is dismissed.

58. The trial court also considered the defences raised by the appellants. We find that they failed to shake the evidence of the prosecution and further failed to explain their whereabouts in detail. Withal, we find that there was no proof that the prosecution witnesses had framed the appellants. In our view and as earlier pointed out, these witnesses were truthful.

59. Lastly, we are alive to the fact that not all weapons were preserved and adduced in evidence. Furthermore, the machete and clothes that were produced in evidence were not taken for forensic analysis. It was certainly incumbent on the prosecution to take the necessary steps to ensure that such evidence was forensically tested to link it to the appellants. However, having said that, and considering the evidence in totality, we are satisfied that with the evidence

on record, the prosecution discharged its burden of proof, the absence of forensic analysis notwithstanding. This is a case of direct

evidence of the deceased's fatal assault by culprits well known to **PW1**, **PW2**, and **PW4**.

60. The last ingredient is that of malice aforethought. Section 206 of the Penal Code gives instances of the same in the following circumstances:

- “a. An intention to cause death or to do grievous harm to any person whether such person is the person actually killed or not;***
- b. Knowledge that the act or omission causing death will cause the death of or grievous harm to some person, whether such person is the person 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 be caused;***
- c. An intent to commit a felony;***
- d. An intention to facilitate the escape from custody of a person who has committed a felony.”***

61. In considering this crucial ingredient, we also embody the ruminations of this Court, constituted differently, in the case of ***Bonaya Tutu Ipu & another vs. Republic*** [2015]

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335 (KLR) that held as follows:

“It is in rare circumstances that the intention to cause death is proved by direct evidence. More frequently, that intention is established by or inferred from the surrounding circumstances. In the persuasive decision of CHESAKIT V. UGANDA, CR. APP. NO. 95 OF

2004, the Court of Appeal of Uganda stated that in determining in a charge of murder whether malice aforethought

has been proved, the court must take into account factors such as the part of the body injured, the type of weapon used, if any, the type of injuries inflicted upon the deceased and the subsequent conduct of the accused person. Earlier in REX V. TUBERE S/O OCHEN (1945) 12 EACA 63, the former Court of Appeal for Eastern Africa stated thus on the issue:

“It (the court) has a duty to perform in considering the weapon used and the part of the body injured, in arriving at a conclusion as to whether malice aforethought has been established, and it will be obvious that ordinarily an inference of malice will flow more readily from the case, say, of a spear or knife than from the use of a stick...”

62. Though all witnesses testified that no grudge existed between the appellants and the deceased, we find that the appellants used dangerous weapons, namely, machetes, to inflict fatal injuries on the deceased. In fact, they only left when the deceased was lifeless. The 1st appellant was heard uttering the words “*umundi ni umundi*”. Those words were translated by **PW1** to mean “let us fight”. Though the appellants argued that an interpreter was necessary to properly translate those words, that translation was not challenged at trial. We therefore find that argument an afterthought. In any event, whatever the words meant, they were uttered during the commission of the crime.

63. The 1st appellant was also heard telling Nkonge: “*Bamo Fanya kazi*”. Those utterances prompted him to inflict injuries to the deceased with his machete. The 1st appellant was also heard saying: “*leo ni leo*” while assaulting her. When the deceased asked the 1st appellant why they wanted to kill her, the 1st appellant responded saying: “*Nakuuwa kabisa.*” The 3rd appellant was also heard saying: “*Wacha nikate akikufa.*”

64. The above expressions clearly demonstrate that the 1st and 3rd appellants had every intention of murdering the deceased. Furthermore, they repeatedly inflicted severe cut injuries on her in the company of the 2nd and 4th appellants, notwithstanding the deceased’s plea to spare her life. The machete blade caused serious injuries, leading to the deceased’s death. In view of the foregoing, we have no iota of doubt that malice aforethought was proved beyond reasonable doubt.

65. As regards the sentence, the appellants were each sentenced to 35 years imprisonment. The trial judge considered the factors advanced by the prosecution and the appellants’ mitigation. The court also took into account the

submissions from the victim's family, as well as the principles enunciated

in the *locus classicus*, decision of **Muruatetu & Another vs Katiba Institute & 5 others**

[2017] KESC2 (KLR). The

deceased died egregiously. We find that the sentence meted out by the trial court was lawful.

66. For those reasons, the appeal on conviction and sentence fails and it is hereby dismissed in its entirety. Orders accordingly.

Dated and delivered at Nyeri this 11th day of December 2025.

K. M'INOTI

.....
JUDGE OF APPEAL

ALI-ARONI

.....
JUDGE OF APPEAL

M. GACHOKA C.Arb, FCI Arb.

.....
JUDGE OF APPEAL

*I certify that this is
a True copy of the
original
Signed*

DEPUTY REGISTRAR