IN THE COURT OF APPEAL AT NYERI

(CORAM: W. KARANJA, ALI-ARONI & GACHOKA, JJ.A.) CRIMINAL APPEAL NO. E025 OF 2021

BETWEEN

MOSES MUGAMBI M'TUERANDU...............APPELLANT

AND

REPUBLIC .... RESPONDENT

(An appeal from the conviction and sentence by the High Court of Kenya at Meru (A.A. Ong'injo, J.) delivered on 27th April 2020 and 29th May 2020,

in

HCCRC No. 27 of 2016)

****

JUDGMENT OF THE COURT

1. Moses Mugambi M'Tuerandu, the appellant herein, was 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 19th April 2016 at the BBC area Kithima location, Buuri District within Meru County, the appellant murdered Sharon Kajuju.

2. The appellant was arraigned before the Meru High Court in *HCCRC No. 27 of 2016*. He pleaded not guilty to the offence

that he was charged with. After a full trial, the appellant was convicted of the offence and sentenced 30 years' imprisonment.

3. The appellant is aggrieved by those findings. He lodged his notice of appeal on 4th March 2021 and memorandum of appeal on the same date. He raised 10 grounds impugning the findings of the learned judge. We have taken the liberty to summarize those grounds as follows: that the DNA samples taken from the blood and semen swabs did not match the appellant's profile; that the prosecution's evidence was riddled with inconsistencies; that the circumstantial evidence and doctrine of last seen failed to meet the threshold for a conviction based on circumstantial evidence; that the prosecution failed to discharge its burden of proof to the required standard; and that his defence was not considered. For those reasons, the appellant prayed that the appeal be allowed, his conviction be quashed and his sentence be set aside so that he is set at liberty.

4. The appeal was virtually heard on 4th September 2025. The appellant was present and represented by learned counsel Mr. Mshila. Principal Prosecution Counsel Miss Mengo, was present for the respondent. At the hearing, parties relied on their written submissions.

5. The appellant's written submissions and list of authorities are both dated 20th August 2025. Learned counsel Mr. Mshila faulted the evidence tendered by the prosecution, in particular that of **PW1**, **PW2**, **PW3** and **PW4**, as being marred with contradictions. For instance, he pointed out that **PW2** stated that the appellant took porridge, whereas **PW3**'s evidence was that the appellant took tea. He further submitted that the evidence of **PW1** and **PW4** was contradictory as to whether they saw the deceased at lunchtime. Citing the decision in ***Richard Munene vs. Republic*** [2018] eKLR, counsel submitted that

   where contradictions, discrepancies and inconsistencies are proved, they must be resolved in favour of an accused person.

6. Mr. Mshila further submitted that since **PW2** was the only witness to have last seen the appellant with the deceased, that evidence did not sufficiently point to the conclusion that he murdered the deceased person. He submitted that the circumstantial evidence relied on by the prosecution was too remote to make a finding that an inference of guilt could be drawn. He argued that in the absence of corroboration, the evidence of **PW1** was unsafe and could not sustain a

conviction. He pointed out that for the prosecution to succeed on the doctrine of last seen, it must prove that: the deceased was last

seen in the company of the appellant; that the deceased was found dead and that there was no possibility of the deceased having left the company of the appellant.

7. Finally, on conviction, counsel submitted that there was no nexus between the appellant and the offence. He argued that the attempt by the prosecution to use DNA evidence to connect the appellant to the offence failed as the DNA swab test was negative.

8. In light of the above, learned counsel submitted that the prosecution failed to discharge its burden of proof to the required standard. In his view, the ingredients of murder and malice aforethought by the appellant were not corroborated with cogent evidence. Withal, the circumstantial evidence was too weak to sustain a conviction. For those reasons, the appellant's advocate prayed that the appeal be allowed by quashing the conviction and setting aside the sentence.

9. The respondent opposed the appeal. Miss Mengo filed written submissions dated 6th August 2025. She submitted that the appellant's defence was a sham, an afterthought and unsubstantiated. For those reasons, it was properly rejected by the trial Judge. Turning to the evidence

presented by the

prosecution, she argued that the evidence was not contradictory but was consistent, reliable and credible. She pointed out that **PW1**, **PW2** and **PW3**'s evidence was consistent to the extent that the last person to be seen with the deceased was the appellant. After all, the deceased's body was discovered wrapped in the appellant's jumper, which he had worn on the morning of the deceased's death and the only rational conclusion that could be arrived at was that he must have killed the deceased. Relying on the authority of ***Erick Onyango Odeng' vs. Republic*** [2014] eKLR, she argued that a court should ignore minor contradictions unless it thinks that they point to deliberate untrustworthiness or affect the main substance of the prosecution case.

10. In view of the foregoing, Miss Mengo submitted that the prosecution discharged its burden of proof to the required standard to prove that the appellant committed the offence of murder. It was therefore unfathomable for the appellant to suggest that circumstantial evidence and the doctrine of last seen did not meet the required threshold. In her view, the circumstantial evidence adduced by **PW1** and **PW4**

properly established that the appellant committed the murder.

11. Lastly, on the DNA evidence, Miss Mengo submitted that the trial court noted that while the Government analyst did not investigate what was required, his report could not discount the fact that the appellant was guilty. For those reasons, the appellant prayed that the appeal be dismissed.

12. This is a first appeal. The duty of this Court as a first appellate court is a well-trodden path as courts have pronounced themselves on this issue severally. We are called upon to re- evaluate, re-analyze and re-consider the evidence adduced before the trial court in order to make our independent decision while making due allowance of the fact that we did not have the advantage of hearing or seeing the witnesses testifying. [See ***Okeno vs. Republic*** (1972) EA 32].

13. Before dealing with the issues that arise for determination, we shall summarize the prosecution's evidence. The prosecution marshalled eight witnesses whose evidence is captured as follows from the record before us: **PW1** Joyce Kathambi testified that on the early morning hours of 19th April 2016, the appellant visited mama Mwendwa. She was her neighbour living in the same plot. **PW1** was at that time washing her daughter's clothes. Her name is Kendi. She

overheard the

appellant speaking to Mwendwa in parables, saying: ***"If he felt like eating chapati, if he saw wheat, or eating sugarcane, if he saw someone chewing one".*** **PW1** intercepted and told Mwendwa to ask the appellant why he was speaking in parables and exactly what he meant by those words. In his response, the appellant silenced her while urging Mwendwa to ignore **PW1** and answer his questions.

14. Later, the appellant told Mwendwa that: ***"If he misses what he is longing to eat, he could eat anything"***. **PW1** then left her nine-year-old daughter Sharon, the deceased herein, playing with her sister Kendi. At that time, there were demonstrations taking place in the neighborhood. She wanted to confirm whether they had stopped as Kendi was ill and wanted to take her to the hospital.

15. On her return to the house 30 minutes later, **PW1** found Kendi lying on the bed crying. The deceased was missing. Though it was raining, she tried looking for the deceased in the toilet and in the neighborhood but could not find her. That was when she was informed by a child called Vivian that the deceased was at Aunt Mwanzi's house. However,

when **PW1** looked for her there, she did not find her.

16. **PW1** went back home after her search efforts were unsuccessful. Soon thereafter, her husband returned home**.** **PW1** informed him that their daughter Sharon was missing. Her husband told her to return home to take care of the other child as he continued with the search efforts. While at home, **PW1** was informed by a neighbor known as Kagendo that when she was serving the appellant porridge that morning, he had seen him giving the deceased Kshs 20.00. **PW1** told her husband what she had been told when he returned home.

17. **PW1**'s further evidence was that she received information that the appellant had been seen giving money to her missing daughter, she informed the neighbours to help them search for the child in the appellant's house, located about 30 meters away from their house. On arrival, they found that the appellant was not in the house. It was locked. This prompted them to report the deceased's disappearance at the chief and the Maili Saba Anti Stock Theft Unit Camp at 7:00 p.m. It was at that time that she received information that the child had been found near a toilet at the appellant's bar. **PW1** immediately retreated to the scene. To her surprise, the deceased was dead and covered with the navy-

blue jumper that

the appellant was wearing that morning. She identified the navy-blue jumper marked for identification as **MF1-P1**.

18. **PW1** testified that she held no grudge against the appellant.

    She also recalled that the appellant had developed a bad notoriety of raping and murdering children. In fact, **PW1** had warned her children against talking or taking instructions from him. She also stated that mama Mwendwa had warned her children about him. She was however not certain if the appellant had been convicted of the offences of defilement and murder previously.

19. **PW2**'s evidence was that she recalled hearing the appellant that morning but could not understand what he was talking about. **PW2** was living with a woman who adopted her as her daughter. The woman used to make *chapatis*, porridge and tea for a living and sell that food at construction sites. She also left some food in their home for sale.

20. It was **PW2**'s further evidence that the appellant went to their house to buy porridge. She served him and went back to the house. The appellant returned shortly thereafter for a refill. After serving him, **PW2** entered the house to watch TV. She stepped out to pick the cup from the appellant when

he found

him together with the deceased, showing her money. The appellant was holding the deceased's hand. **PW2** observed that when the appellant caught her eye, he pretended to give the deceased Kshs. 20.00 to take to **PW2**. She went back to the house, came out a third time and once more saw the appellant holding the deceased's hand and showing her money. She entered her house after taking the money that the appellant had given her.

21. **PW2** further testified that **PW1** came back home at 3:00 p.m. and informed her that the deceased was missing. **PW2** informed her that earlier on, the appellant suspiciously showed the deceased money and pretended to hand her Kshs. 20.00 coin to take to her. That was when they proceeded to the appellant's house to look for the deceased with the assistance of the neighbors.

22. **PW2** recalled that behind their plot was a timber house establishment selling alcohol. She recognized the owner as Msanii, an ex-girlfriend of the appellant. There was a toilet next to it. That was where the deceased's body was found. It was placed in two manila bags covered in a navy-blue jumper. She recalled that the jumper that covered the deceased was the one

the appellant was wearing when he was buying porridge that morning. On cross examination, she was categorical that she saw the appellant holding the deceased's hand and that when her body was discovered, she informed the police that the jumper was similar to what the appellant was wearing but she was not sure whether the police recorded that in her statement.

23. **PW3** Evelyn Mwendwa, a hotelier, testified that on the fateful day, the appellant purchased tea from her establishment at 10:00 a.m. He was a regular customer. He was asking her bizarre questions in the presence of **PW1** and **PW2**. She also recalled the appellant shutting **PW1** down when she asked him why he was asking strange questions.

24. Later at 2:00 p.m., on her return to the plot, **PW3** asked **PW2** why **PW1**'s child was crying. **PW2** told her that she presumed that the deceased was monitoring the baby. That was when they were informed that the deceased was missing. When the search party failed to yield positive results, they were later informed at 8:00 p.m. that the deceased's body was found stuffed in manila bags lying against the fence of a neighbouring plot.

25. **PW3** explained that the body, with the deceased's clothes wrapped around her waist, was found near a bar that was operated by the appellant. Furthermore, the deceased's underwear was missing and she was covered in a navy-blue jumper. **PW3** added that she held no grudge against the appellant.

26. **PW4** Martin Mwiti Kinyua, the deceased's father, testified that on 19th April 2016, he reported for duty at a construction site at 10:00 a.m. He left the appellant drinking tea. He was wearing a jumper. When he returned home for lunch, he found his wife, **PW1** and children who were all well.

27. Later at 6:00 p.m., he was informed by **PW1** that their deceased daughter was missing. They alerted neighbours to help them look for their child. At 8:00 p.m., they found the deceased's body in a manila bag covered in a jumper by the fence. It was in a neighbouring plot where the appellant operated a wines and spirits shop in a timber structure.

28. **PW4**'s evidence was that the body was transferred to the mortuary. He added that the appellant went into hiding but was later traced by police officers. He maintained that he

held no grudge against the appellant, whom he had known since

childhood. He accused the appellant of committing the offence because his jumper was used to cover the deceased's body. He was adamant that it was a unique jumper and could only belong to the appellant.

29. **PW5** PC Mark Bundi testified on behalf of the investigating officer who could not be bonded. He testified that the investigating officer received the report and commenced investigations. He interrogated witnesses, recorded witness statements and collected the evidence. He testified that the deceased was sodomized before being murdered. The investigating officer thereafter preferred the present charges against the appellant.

30. **PW5** revealed that though samples were taken for forensic analysis, the officer in charge had gone for maternity leave. As such, the report was not adduced in evidence. He produced the jumper, a torn skirt and a pink t-shirt in evidence. He also admitted that the manila bags were not preserved for evidence. Finally, he testified that blue jumpers were common in the locality.

31. **PW6** Dr. Joshua Kibera Chege, an anatomical pathologist, confirmed that he conducted the post mortem on 27th April

2016 at Isiolo Level 5 Hospital and authored the report. The body was identified by **PW4** and Japheth Gitonga. He observed that the deceased had soiled clothes. She had a puffy face with blood coming out of her nostrils and mouth. There was a congestion enlargement of blood vessels in the brain. He formed the opinion that the deceased died as a result of manual asphyxiation. Tissues from the brain, lungs and kidneys were further taken for histology. He signed the post mortem report that was adduced in evidence though he didn't write his name on the report.

32. **PW7** Ruth Wangare Kahiu, a government analyst, testified that she received the following samples on 17th May 2016 from Sgt. Joseph Macharia: two anal swabs in Khaki indicated to belong to the deceased and blood samples indicated to belong to the appellant. **PW7**'s findings were that the anal swabs were neither stained with semen nor blood. The conclusion was that the anal swabs generated a DNA profile of an unknown female. She also testified that they were not provided with reference samples from the deceased such as her blood. The report dated 23rd July 2019 and the exhibit memo were produced in evidence.

33. 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 appellant. He was placed on his defence and gave sworn evidence. He testified that he was irrigating tomatoes at the farm on 18th April 2016. At that time, he had differed with his wife who traveled to Nairobi.

34. The following day, he irrigated the farm till midday when the water flow was discontinued. The appellant testified that he was hungry. For that reason, he visited Mwirera's wife who told him to wait for food. Since he desired to travel to Nanyuki, the appellant opted to buy food from mama Mwendwa's. The hotel was close to his former bar establishment. The owner was making *chapatis*. He thus ordered porridge. He stated that he took two cups of porridge and a *chapati*. When he was done, the appellant wanted to pay **PW2** but she was inside the house. The appellant testified that since **PW2** was in the house, he sent a child who was around to take the money to her. Upon doing so, the appellant retreated to a nearby tarmac road while the child entered the house with the money and cup. The appellant then travelled to Nanyuki and then to Kanyoni. He then stayed in Mount Kenya Safari Club from 20th April

2016 to 14th May

2016. He was then arrested on 15th May 2016. He denied that

he was wearing the jumper adduced in evidence. Instead, he stated that the jumper he was wearing in court was not the one he wore on that material day. He denied committing the offence.

35. Having summarized the evidence, we now turn to the question whether the appellant was properly convicted. 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; that the death of the deceased was caused by an unlawful act or omission by the perpetrator; and that the perpetrator was possessed with malice aforethought.

36. We note that the appellant has summarized his grounds of appeal as follows: whether the prosecution evidence was contradictory; whether the circumstantial evidence can sustain a conviction on the doctrine of last seen; and whether the doctrine of last seen is sustainable in view of the negative forensic evidence.

37. It is common ground that the prosecution's case was solely based on circumstantial evidence and the doctrine of last seen. The law on circumstantial evidence is well settled in

our

jurisdiction. This Court in ***Ahamad Abolfathi Mohammed & another vs. Republic*** [2018] KECA 743 (KLR) held as follows:

> ***"Circumstantial evidence is evidence, which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form as strong a basis for proving the guilt of an accused person just like direct evidence. Way back in 1928 Lord Heward, CJ, stated as follows on circumstantial evidence in R v. Taylor, Weaver & Donovan [1928] CR. App. R. 21:***
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> > "***It has been said that the evidence against applicant is circumstantial. So it is, but circumstantial evidence is very often the best. It is evidence of surrounding circumstances which, by undesigned coincidence is capable of proving a proposition with the accuracy of Mathematics. It is no derogation from evidence to say that is circumstantial." (See also Musili Tulo v. Republic Cr. App. No. 30 of 2013)."***
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> ***Before circumstantial evidence can form the basis of a conviction, however, it must satisfy several conditions, which are designed to ensure that it unerringly points to the accused person, and to no other person, as the perpetrator of the offence. In Abanga alias Onyango v Republic, Cr. App No. 32 of 1990 this Court set out the conditions as follows:***
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> > ***"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." (See also ***<u>Sawe v.</u>***

***Republic** (supra) and **GMI v. Republic**, Cr. Ap. No. 308 of 2011.*

In addition, the prosecution must establish that there are no other co-existing circumstances, which would weaken or destroy the inference of guilt. (See Teper v. R. [1952] All ER 480 and Musoke v. R. [1958] EA 715). In Dhalay Singh v Republic, Cr App. No. 10 of 1997, this Court reiterated this principle as follows:

> ***"For our part, we think that if there be other co- existing circumstances which would weaken or destroy the inference of guilt, then the case has not been proved beyond any reasonable doubt and an accused is entitled to an acquittal."***

38. This Court has also pronounced itself on the doctrine of last seen. In the case of ***Moingo & Another vs. Republic*** [2022] KECA 6 (KLR), the Court held:

> ***"The fact that the deceased was last seen in the hands and restraint of the appellants, a prima facie case was established to require the appellants to give a reasonable explanation as to what befell him. Even though the onus of proof in criminal cases always rests squarely on the prosecution at all times, the Last Seen doctrine in the prosecution of murder or culpable homicide cases is that, where the deceased was last seen with the accused, there is a duty placed on the accused to give an explanation relating to how the deceased met his/or her death. In the absence of any explanation, the court is justified in drawing an inference that the accused killed the deceased (see the Nigerian case of Moses Jua v the State [2007] PELR-CA/11 42/2006)."***

39. Similarly, the Court of Appeal in Nigeria in the case of

Stephen Haruna vs. The Attorney-General of The Federation (2010)

1 I LAW/ CA/A/86/C/2009 opined thus:

“The doctrine of "last seen" means that the law presumes that the person last seen with a deceased bears full responsibility for his death. Thus where an accused person was the last person to be seen in the company of the deceased and circumstantial evidence is overwhelming and leads to no other conclusion, there is no room for acquittal. It is the duty of the appellant to give an explanation relating to how the deceased met her death in such circumstance. In the absence of a satisfactory explanation, a trial court and an appellate court will be justified in drawing the inference that the accused person killed the deceased.”

40. On the question of the death, we note that though **PW6** did not sign the postmortem report, his evidence is clear that he did the postmortem after the body was identified by **PW4**, Martin Kinyua. The cause of death was manual asphyxiation through suffocation. He further confirmed that the handwriting on the postmortem report was his. We note that this has not be challenged by the appellant and therefore nothing turns on this as the question of the death and the cause of death is not in dispute.

41. The elephant in the room is whether the appellant committed an unlawful act or omission that led to the death of the deceased. This raises the following questions: Do the circumstances firmly point to the guilt of the appellant? Secondly, given the circumstances, is there any possibility

that

anyone else would have committed the offence other than the appellant?

42. To answer these conjunctive questions, a Court has a duty to carefully weave through the evidence that was adduced. We have already set out the evidence that was adduced by the prosecution. The evidence of **PW1** and **PW2** is clear that the appellant went to the house of **PW3** to buy porridge and chapati. The strange statements that he made that alarmed **PW1** may not mean much.

43. What is important to note however is that **PW1** left the deceased and her sister sitting near the place where the appellant was. **PW2** gave evidence that she is the one who sold the porridge to the appellant. She went back into the house and when she went out to refill the appellant's cup, he found him holding the deceased's hand. She observed further that the appellant pretended to show the deceased a Kshs. 20.00 coin on realizing that **PW2** had seen what he was doing. **PW2** went back to the house and when she came out for the third time, she saw the appellant holding the deceased's hand, giving her Kshs. 20.00.

44. The evidence is also clear that **PW1**, the deceased's mother, who had stepped out, returned 30 minutes later to only

find her

other daughter crying on the bed, while covered in a mosquito net. The deceased was missing and a search commenced immediately. **PW1** was told by **PW2** that she had seen the appellant holding the child. Suspicious that the appellant could be holding the deceased in his house, **PW1** and the neigbours went to the appellant's house. However, on arrival, they found the appellant's house locked.

45. Later, the body of the deceased was found near a toilet next to the bar that belonged to the appellant. The body was covered with a navy-blue jumper, similar to the one that the appellant was wearing that morning. There is evidence of at least three witnesses, that is, **PW1**, **PW2** and **PW4**, that the appellant was wearing a navy-blue jumper during the morning hours same day that the deceased disappeared.

46. From the above analysis, the chain of events points to one direction: the disappearance of the deceased, who was last seen with the appellant when he lured her with money. The disappearance of the deceased was discovered barely 30 minutes later and the search within the vicinity commenced immediately. The body was found next to the toilet near a bar operated by the appellant. There is corroborative evidence of at

least three witnesses that the body was covered with a navy- blue jumper similar to the one that the appellant was wearing that fateful morning.

47. It is clear from the foregoing that the appellant was the last person seen with the deceased when he was luring her with money. The burden of proof rests throughout with the prosecution. However, it is instructive to note that the appellant himself admitted that he was present in the compound with the deceased and gave her money. The only point of departure is that he claimed that he gave her the money to pay **PW2** on his behalf for the food items that he had consumed.

48. Though no DNA samples were properly or at all submitted for forensic analysis, this was a case that did not call for the necessity of its admission. In other words, the absence of the forensic evidence did not render the evidence tendered by the prosecution insufficient.

49. One other issue is discernible in this appeal; the post-offence conduct of the appellant. The evidence showsT that the appellant disappeared soon after the commission of the offence. He went into hiding and was arrested months later.

In ***Nakwai***

vs. Republic [2025] KECA 1347 (KLR), this Court stated as follows:

> ***"Two fundamental issues are discernible in this case. One is appellant's disappearance after the body was discovered, which in legal parlance is described as "the post offence conduct". The following remarks made by Rothstein, J in R vs. White[1999] 2 SCR on behalf of the majority of the Canadian Supreme Court, indicate the approach to the assessment of post-offence conduct as circumstantial evidence of guilt:***
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> > ***"The principle that after-the-fact conduct may constitute circumstantial evidence of guilt remains good law. At its heart, the question of whether such evidence is admissible is simply a matter of relevance... As Major J. noted in White(1998), 'evidence of post-offence conduct is not fundamentally different from other kinds of circumstantial evidence. In some cases, it may be highly incriminating, while in others it might play only a minor corroborative role' ... As with all other evidence, the relevance and probative value of post-offence conduct must be assessed on a case-by-case basis... Consequently, the formulation of limiting instructions with respect to the broad category of post-offence conduct is governed by the same principles as for all other circumstantial evidence."***
>
> ***Actions such as attempting to conceal evidence, making false statements, fleeing the scene or fabricating an alibi can suggest that the accused is trying to hide his involvement in the crime. The Court must determine if the conduct is relevant to the crime and if it has probative value, meaning it tends to prove guilty. Inferences of guilt drawn from post- offence conduct must be reasonable and supported by evidence and not just speculative. The Court***

considers whether there are other reasonable explanations for the conduct that don't suggest guilt. Our reading of the appellant’s defence leaves

us with no doubt that he never even offered plausible reasons for his post-offence disappearance. As was held in Douglas Thiongo Kibocha vs. Republic [2009] eKLR:

> ***"When parliament enacted section 111 (1), above, it must have recognized that there are situations when an accused person must be called upon to offer an explanation on certain matters especially within his knowledge. Otherwise, the prosecution would not be able to conduct full investigations in such cases and the accused in the event, will escape punishment even when the circumstances suggest otherwise. Section 111(1), above, places an evidential burden on an accused to explain those matters which are especially within his own knowledge. It may happen that the explanation may be in the nature of an admission of a material fact."***

The circumstantial evidence on the record when taken cumulatively shifted the evidential burden to the appellant to explain why he escaped after the body was discovered.

50. The evidence of PW1, PW2, PW3 and PW4 was consistent that the navy blue jumper that covered the deceased was similar to the one that the appellant was wearing on that fateful morning. The denial by appellant that the jumper was his did not shake that evidence. The burden of proof rests with the prosecution always. We find that the appellant did not offer a rational explanation that would cast doubt on the prosecution's evidence. Furthermore, the appellant failed to conclusively persuade us that he did not flee the scene. After

the incident, he

was untraceable at his home, which remained locked. He was only arrested days later after going into hiding.

51. The injuries inflicted on the deceased lead us to the finding that the appellant had every intention of murdering the deceased. This proves that the appellant was possessed with malice aforethought in line with section 206 of the Penal Code.

52. We are satisfied that this evidence forms a complete chain that only points to the appellant as the perpetrator of the offence. Just as the trial Judge, we are satisfied that the prosecution established the guilt of the appellant to the required standard. In view of those reasons, we see no reason to disturb the findings on conviction which we hereby sustain.

53. On sentence, the appellant was condemned to serve 30 years imprisonment. The court took into account the appellant's mitigation as well as the victim's impact assessment. The deceased was a minor child with a bright future ahead of her. We are indeed of the view that the trial court exercised leniency in sentencing the appellant and rightfully applied the principles in ***<u>Muruatetu & another vs.</u>***

Republic; Katiba Institute & 5 others (Amicus Curiae)

[2017] KESC 2 (KLR). For those

reasons, we find that the appeal on sentence equally lacks merit.

54. The appeal is hereby dismissed.

Dated and delivered at Nyeri this 19th day of December 2025.

W. KARANJA

....
JUDGE OF

APPEAL ALI-

ARONI

....
JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

....
JUDGE OF APPEAL

I certify that this is a true copy of the original.
Signed.

DEPUTY REGISTRAR

THE COURT OF APPEAL
JUDICIARY
REPUBLIC OF KENYA