

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL CASE NO.E035 OF 2024

REPUBLIC.....

.....PROSECUTOR

VERSUS

STEPHEN MUIGAI KOIMBURI.....ACCUSED

JUDGEMENT

1. Stephen Muigai Koimburi, the accused herein is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars are that on 2/5/2021 at Makoi Area Sinyerere Location within Trans-Nzoia County murdered Cecilia Njeri Mwaura (deceased).
2. The accused person denied the charge and the prosecution has presented a total of four witnesses in support of its case while the accused on his part opted to remain silent in his defence. The prosecution's case is largely based on circumstantial evidence. Below is a summary of the evidence/testimonies of witnesses called.
3. Dr. Dennis Nanyingi (**PW1**) testified that he performed Post Mortem examination of the body of Cecilia Njeri Mwaura (deceased) and that the body was identified by Jane Wanjiku

and Margaret Nyambura Maina. The doctor stated that his findings on the body of deceased were as follows;

a) Externally

- i) *Peripheral cyanosis on the finger nail, (blackening of finger nails due to lack of oxygen).***
- ii) *Bruises on the neck.***
- iii) *Linear depression on upper neck region.***

(b) Internally

- i) *That both lungs were in semi-collapse state and devoid of air bubbles.***
- ii) *Perineal tear of the vagina at 6 O'clock with lacerations.***

4. As a result of the findings, the doctor concluded that the deceased died as a result of asphyxia secondary to strangulation and suspected rape. He stated that he issued a Burial Permit Serial No.1751571. That he signed the autopsy report and tendered it as **PExhibit 1**. He further stated that he also did a high vaginal swab and sent a sample to Government Chemist for forensic analysis.
5. George Koimburi Mwaura (**PW2**) the father of the accused and a son to the deceased testified that he last saw his deceased mother on 1/5/2021 going to the toilet. That he had seen her again during the day in her farm working and in good health.
6. He stated that as he was sleeping between 11pm and midnight a '**Nyumba Kumi**' member known as Baba Kariuki called him on phone telling him that his son, the accused

herein, had been caught trying to run away. That after a few minutes a mob brought back the accused to him and he asked them why they were doing so. He stated that he had given up on the accused long time ago due to his waywardness. He referred to him as a **“terrible thief”**. That he had washed his hands and that he told the mob to go and deal with him in a manner they deem fit because he had already denounced him as a son due to his criminal behavior. That the crowd took the accused to the gate and beat him.

7. He stated that because of the screams, the mother of the accused got emotional and so he went and told the mob to go and beat him far away from his home as he went back to sleep.
8. He stated that they recovered a sweater, a phone, kikoi and Identification Card all belonging to the deceased and in the morning he sent one of the siblings of the accused to return them to his mother (deceased). That shortly her daughter Muthoni who had taken clothes to the grandmother called saying that the deceased was lying down in her room. That his wife rushed there and came back with shock written all over her face saying that the body of the deceased was cold.
9. He stated that he went over to the house of the deceased and found his mother lying on the floor. That he saw a rope and a wire on her neck and immediately knew that the accused was responsible and he began calling relatives to

inform them about the bad news. That the accused is very lucky because had they known the previous night on being caught trying to run away that he had murdered his grandmother, he would have been past tense. He became emotional describing the accused person as **“the devil”** as he identified the clothes belonging to the deceased that were recovered from the accused as he tried to flee the scene. He stated that his mother’s house is around 20 metres from his own house but did not hear her screaming or calling out for help.

10. Virginia Wangoi (**PW3**) a mother to the accused and wife to **PW1** testified that on 1/5/21 at around midnight she heard one Ndungu whom she said was now deceased calling outside and that her husband **PW1** went out to find out what it was and she followed him outside with her house girl in tow. That they found a mob outside surrounding the accused. That **PW1** told the mob to take him away as he did not want him. That Mary Muthoni, her daughter recognized clothes that the accused was holding as belonging to the deceased grandmother. That the accused had covered himself with the kikoi that also belonged to the deceased.
11. She stated that **PW1** got enraged and asked the mob to take the accused away and deal with him as he had denounced him. That the mob then descended on the accused and beat him near a road and as he screamed, her

husband **PW1** went and told them to kill him far away as she could not stand the screams of her son.

12. The witness stated that they slept and the following day her daughter went to see the grandmother (deceased) and came back in shock saying the grandmother's body was lying down and her body was cold. She broke down as she narrated how she went and found her mother in law lying down dead and the room appearing to be in a mess. That her mother in law was organized and kept her house neat but the mattress had been turned upside down and her clothes strewn all over.
13. She further recalled that the accused was caught running away with clothes belonging to the deceased. That the accused was a thief and would only appear at home to steal adding that prior to the incident he had not been seen for about 3 weeks. That she did not know where he stayed.
14. CPL Stephen Ngeny Simam (**PW4**), the investigating officer in the case recalled that on 8/5/21 following a murder report made at Sibanga police post on 2/5/21, he was instructed by CCIO CIP Peter Omare to accompany him to the scene which was Makoi area in Kaplamai Trans-Nzoia East. That on arrival they found the family of **PW2** and **PW3** who showed them the house the deceased occupied and where the murder occurred. That he later recorded statements from witnesses and that the family handed over

the items the accused was found with as he tried to run away on the material night. He tendered the following items;

(i) Kikoi - Pexhibit 2(a).

(ii) Checked sweater - Pexhibit 2(b).

(iii) Strap and electric wire Pexhibit 3a and 3b respectively.

(iv) ID Card belonging to the deceased Pexhibit 6

(v) Mobile phone Itel Make - Pexhibit 4(a) and

(vi) Inua Jamii Card - Pexhibit 5

15. The investigating officer testified on 8/10/2024 he received information that the accused was being held in Naivasha Prison for an offence of robbery with violence. That on 9/10/2024 he proceeded to Naivasha prison and found him there. That he recorded his statement and his finger prints after a struggle because at first he refused to cooperate.

16. He stated that when the father told the mob to deal with the accused, the youths beat him and released him upon which he went into hiding until they got information that he had been involved with robbery with violence and charged and convicted vide **Molo CM's Court Cr. Case No.4325/21**. The investigating officer stated that after the murder incident the accused committed robbery with violence and was caught, charged and convicted. That he

was found after 3 years since the murder incident since no one knew where he disappeared to.

17. When the accused was placed on his defence, he opted to remain silent and insisted on doing so through his counsel. He is charged with murder contrary to section 203 of the Penal Code. For a murder charge to be sustained under that provision three essential ingredients of the offence must be established and proved beyond reasonable doubt. The ingredients are as follow;

(i) Fact of death and its cause.

(ii) Actus reus or the fact that the accused through unlawful act of commission or omission caused the death of the deceased and

(iii) Mens rea or malice aforethought.

18. (i) **Fact of death and its cause.**

The evidence of **PW2** and **PW3** with regard to the death of the deceased was corroborated by the doctor's evidence tendered by Dr. Nanyingi (**PW1**). The doctor conducted Post Mortem examination on the body of the deceased and found that the cause of death was asphyxia secondary to strangulation. The doctor also suspected rape because he noted perineal tear on the vaginal of the deceased with lacerations on the vaginal walls. He issued a Burial Permit serial number 17515 71 and tendered Post Mortem report as Pexhibit 1. The fact of death and its cause have been proved beyond any doubt.

19. (ii) **Actus reus**

The prosecution's case on this element is reliant on circumstantial evidence as no one saw the accused committing the offence. The accused person was arrested by members of the public on the material night trying to flee the area and because of the clothes he had on his hands, the youths suspected that he had committed an offence and that is why they frog matched him to his home where his own father (**PW2**) denounced him and told the mob to go and deal with him. At that moment, no one had a clue about the murder of the deceased. That is why the father (**PW2**) testified in this court expressing a lot of emotion and bitterness and stating that the accused is lucky because had they known about the murder of the deceased, he would have been past tense. This is how he put it;

“Had we known the previous night that he had murdered my mother, he would have been past tense. We would not have been her troubling people with a case. This boy is terrible”.

20. Now turning back to the circumstantial evidence. It is well settled as was well illustrated in the case of **Ahmad Abolfathi Mohammed and Anor (2018) KECA 743 KLR**, that before circumstantial evidence can form the basis of conviction it must satisfy 3 conditions set in **Abanga Alias Onyango (Cr.A No.32 of 1990)** which are;

- i) The circumstances from which inference of guilt is sought to be drawn must be cogent and firmly established.***
- ii) Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused.***
- iii) That circumstances taken cumulatively should form a chain so complete that there is no escape from conclusion that within all human probability the crime was committed by the accused and no one else.***

21. The prosecution submits the accused was initially arrested on suspicion of theft by members of public. That he was in possession of deceased's kikoi, sweater, ID Card and phone (Itel Make) and Inua Jamii Card. PW4 tendered the items in evidence as **Pexhibit 2(a), 2(b), Pexhibit 6, Pexhibit 4(a) and Pexhibit 5** respectively.
22. The accused person after being subjected to some beatings was released by the angry mob and he disappeared. The investigating officer stated that he was caught 3 years later when information reached them that he had been charged and convicted for robbery with violence vide Molo CM's Court Cr.Case No.4325/21.
23. The fact that he was subsequently caught and convicted of another serious offence goes to justify his father's assertion that the accused was a perennial criminal which made him to denounce him as his son.

24. The investigating officer stated that when he went and found him incarcerated in Naivasha prison, he was uncooperative and declined to have his finger prints taken.

25. What is however significant is that he was found carrying clothes and items belonging to the deceased the same night that the deceased was murdered. When placed on his defence to give an explanation on how he was found with the indicting items belonging to the deceased who was found murdered lying dead in her house the following morning, the accused remained silent. That led to unmistakable inference that he was responsible for the murder. This court finds that the prosecution's case given the surrounding circumstances has created a positive link between the accused and the murder of his grandmother (deceased). He disappeared from home after the incident and was discovered by sheer luck 3 years later serving a sentence in Naivasha Maximum Prison. The element of actus reus has been proved beyond reasonable doubt.

26. (iii) **Malice aforethought.**

There was no direct evidence showing that the accused harboured ill motive against the deceased but malice aforethought can be inferred under section 206 of the Penal Code. The provisions provide;

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

27. The manner in which the deceased was murdered and raped is a demonstration of malice. The deceased was strangled to death using a wire and that is why probably no one heard her scream. The house she was occupying was found in disarray. The clothes strewn all over in the house with the mattress turned upside down. There was no doubt that the person who committed the heinous crime intended to silence her, rape and rob her. The element of mens rea has been clearly established and proved beyond any reasonable doubt.

28. This court finds that the prosecution's case against the accused is simply overwhelming. The father **(PW2)** described him as a **'devil'** as he emotionally narrated how he had troubled them as a family. His own mother **(PW3)** wept uncontrollably in court as she narrated how she found the body of her mother in law lying on the floor of her house. This was a murder committed in a most foul manner. It was

bestly and no wonder the father regretted that had the murder been discovered earlier when the accused was fleeing at night, he would probably be past tense by now.

This court finds him guilty as charged and he is hereby convicted accordingly.

DELIVERED, DATED and SIGNED at KITALE this29th day ofJANUARY....., 2026.

HON JUSTICE R.K. LIMO
KITALE HIGH COURT

Judgment delivered in open court

In the presence of

M/s Mukanda for the Accused person

Mugun for the State

Duke/Chemosop- Court assistants