



REPUBLIC OF KENYA



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**Republic v Nyairo & 2 others (Criminal Case 5 of 2016)
[2026] KEHC 635 (KLR) (14 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 635 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 5 OF 2016
DO CHEPKWONY, J
JANUARY 14, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

RONALD NYAIRO 1ST ACCUSED

DAVID NJUGUNA MBUGUA 2ND ACCUSED

ROSELYN KARAMBU 3RD ACCUSED

JUDGMENT

1. The Accused persons, Ronald Nyairo, David Njuguna Mbugua, and Roselyn Karambu, stand jointly charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of the charge are that:-

“On the night of 4th and 5th June, 2014, at Regen area in Kinoo within Kiambu County, the Accused persons jointly murdered Paul Kibisu Musalia.

2. In support of its case, the prosecution called a total of nine (9) witnesses, namely:
 - a. PW1, BMM,
 - b. PW2, Sabet Inyagura Musalia,
 - c. PW3, Pamela Musalia,
 - d. PW4, Michael Aswani Mutumu,
 - e. PW5, Inspector Nicholas Kwontike No. XXX,
 - f. PW6, PC Stephen Tenai No. XXX,



- g. PW7, SSP Joseph Ondoro No. XXX,
 - h. PW8, Inspector Ezekiel Oudo No. XXX, and
 - i. PW9, Dorothy Njeru.
3. Upon the close of the prosecution's case, the Court found that the Accused persons have a case to answer and placed them on their defence. The defence called six (6) witnesses, who testified as Ronald Nyairo (DW1), Roselyne Karambu (DW2), David Njuguna Mbugua (DW3), Stanley Njogu Njuguna (DW4), Mary Mambo Njuguna (DW5), and Newton Kirimi Mugambi (DW6) respectively.

Prosecution Evidence

4. The Court notes that although BMM (PW1) was the first prosecution witness, at the material time he was a minor. Consequently, he was temporarily stood down to allow his aunt to testify first, in order to provide context in the case and to act as an intermediary between him and the court, before he eventually gave his testimony.
5. PW2, Sabet Inyagura Musalia, testified that she is a sister to the deceased. She stated that on the night of 4th June, 2014, she was at home with her sister Pamela Musalia (PW3) and they had retired to bed when, late at night, they heard persistent knocking at the door. The persons who were knocking on the door identified themselves as Police Officers. Owing to the late hour of the night, PW2 initially declined to open the door. However, when the knocking escalated into attempts to force the door open, she opened it and found that the visitors were Roselyn Karambu, the deceased's landlady, David Njuguna Mbugua, and Ronald Nyairo, who was a tenant in the same premises. They are the three accused persons in this case. She stated that she recognised all three Accused persons very well since she had known them for over two years.
6. PW2 testified that the Accused persons informed her that they had killed the deceased and instructed her to go and collect his personal belongings as well as his child. She went on to testify that the following morning, the deceased's son went to her house and informed her that the landlady had sent him to tell her to collect the deceased's clothes. Subsequently, the 3rd Accused, Roselyn Karambu, personally went to PW2's house and repeated the demand and even threatened to burn the deceased's belongings if they were not collected. PW2 stated that she later proceeded to the deceased's house, while her sister went to report the matter to the area chief.
7. PW2 further testified that on 7th June 2014, she went to the City Mortuary, where she found and positively identified the body of the deceased. She stated that the body had been tied at the back and placed inside a sack. She emphasized that, to her knowledge, there had been no prior animosity between the deceased and the Accused persons. She identified all the Accused persons in court and added that the deceased had been living with his son, having separated from his wife.
8. Upon cross-examination, PW2 stated that the deceased lived less than one kilometre away from her residence. She confirmed that the Accused persons came to her house at night. She further stated that she recorded two statements with the police, explaining that the second statement was necessitated by the release of the Accused persons. She also clarified that her statement did not contain the name "Betty," which is her common nickname.
9. PW1, BMM, the minor son of the deceased who had been stood down was put back on the dock and he testified that on the material night, the Accused persons went to their house and took his father away. He stated that he never saw his father again until the day of his burial. According to PW1, the Accused persons ordered him to close the door after removing the deceased from the house. He testified that he



knew all the Accused persons well. After they left, he went back to sleep. And in the morning, upon realising that his father had not returned, he went to PW2's house in search of him.

10. On cross-examination, PW1 maintained that he clearly recognised the three Accused persons, whom he had known prior to the incident. He stated that the 1st Accused, Ronald Nyairo, was their neighbour who lived one house away from them and was a friend of the deceased. He further testified that they had lived in that house with the deceased for about one year. PW1 further stated that when the Accused persons entered the house that night, there was electricity lighting, enabling him to see them clearly. He could not recall what the 3rd Accused was carrying, but stated that David Njuguna Mbugua was armed with a panga, while Ronald Nyairo was armed with a metal rod, and that it was Ronald Nyairo who spoke to the deceased.
11. Upon re-examination, PW1 reaffirmed that it was only the three Accused persons who came to their house that night and no other persons entered the house.
12. PW3, Pamela Musalia, testified that the deceased was her brother. She stated that on the night of 4th June, 2014 at about 11.00 p.m., she was asleep at PW2's house when she was awakened by loud banging on the door. That she opened the door and a group of people entered the house. PW3 testified that she recognised the individuals, although she did not know their names at the time. She identified them as the deceased's landlady and her husband, a neighbour of the deceased, and another person who was the deceased's neighbor whom she frequently saw whenever she visited the deceased. She identified the Accused persons to court.
13. PW3 told court that she saw the 1st Accused was armed with a rungu, but did not see what the others were carrying. She stated that the 2nd Accused asked PW2 whether she knew her, and upon receiving an affirmative response, informed PW2 that they had killed the deceased. She further testified that the Accused persons told them that before his death, the deceased had told them that he had taken a stolen television set to PW2's house. PW2 allowed them to search the house, and during the search, the 2nd Accused made a phone call on loudspeaker, to inquire what make the stolen TV was and the person she called described the stolen television as a Flamingo brand, which did not match the brand of television which was found in the house. The Accused persons then apologised for the disturbance and asked them to go and collect the deceased's body.
14. It was PW3's evidence that they returned to sleep that night, and the following day PW1 went to PW2's house. That she later accompanied PW2 to record a statement with the police and subsequently learnt that the deceased's body was at City Mortuary.
15. On cross-examination, PW3 clarified that the door had not been broken, though the group had threatened to do so by banging it loudly. She stated that the lights were on and thus enabled her to see these people clearly. She reiterated that the group informed them that they had killed the deceased. She further confirmed that she did not report the matter to the police on the same night. PW3 further testified that she was living with PW2, while the deceased lived about one kilometre away from them. She confirmed that she had seen the landlady at least three times before the incident and that she reported the matter at Kabete Police Station and not Regen or Kikuyu Police Station.
16. Upon re-examination, PW3 stated that she recorded her statement only once and reiterated that she informed the police that she had recognised the three Accused persons as the persons who had come to PW2's house that night.
17. PW4, Michael Aswani Mufumu, testified that on 6th June 2014, he received information that his nephew had died. He went to Kabete Police Station, where PW2 explained to him the circumstances



- surrounding the deceased's death. Thereafter, they proceeded to City Mortuary, where he saw the deceased's body and observed that it had a visible injury to the head.
18. On cross-examination, PW4 stated that he visited both Kikuyu and Kabete Police Stations, as he sought to establish whether it was the Kikuyu police who had taken the body to the mortuary. He further stated that he could not recall the exact date when the post-mortem examination was conducted.
 19. PW5, No.XXX Inspector Nicholas Kwonyike, a DCI Officer, testified that he was assigned to investigate the matter. He stated that he recorded statements from various witnesses, including the Accused persons, who had already been arrested. He testified that following the investigations, the Accused persons were charged with the offence of murder. He further stated that investigations established that the Accused persons had gone to the house of the deceased, removed him from there and later his dead body was found. However, he conceded that the murder weapon was never recovered.
 20. Upon cross-examination, PW5, Inspector Nicholas Kwonyike, stated that although the three suspects were present in court, he could not readily recall their names. He testified that he had not previously known them and had only encountered them when they were brought to Kabete Police Station. He further stated that the investigations were later taken over by Corporal Njuguna, and as such, he could not account for when the Accused persons were released from custody. He candidly admitted that he did not personally visit the scene of crime.
 21. On further cross-examination, PW5 testified that the police officers who recovered the deceased's body were from Kikuyu Police Station. He stated that the body was recovered on 7th June, 2014, at a time when the Accused persons were already in custody, although he could not state where or how they had been arrested. He further testified that he took over the matter after his interdiction and therefore could not confirm whether the Accused persons had been released and subsequently rearrested. PW5 denied allegations that he demanded Kshs.35,000/= to secure the release of the Accused persons and stated that upon realising that such money had been received, he refunded it to an individual at the DCIO's office. At that point, the witness was stood down to allow for verification of his M-Pesa statement.
 22. Subsequently, PW5 was recalled and he told the court that on 19th June, 2014, he received Kshs.35,000/= from Stanley Njuguna, a relative of the 2nd and 3rd Accused persons, and an additional Kshs.5,000/= from Mary Mambo, another relative of the 2nd Accused. He stated that the police had been granted authority to hold the Accused persons until 23rd June, 2014, and since he had no discretion to grant bail, he forwarded the monies to his superior, the DCIO, SSP Joseph Ondoro. He further testified that he was not aware if the 3rd Accused person was ever granted bail or whether her motorcycle was detained by police.
 23. PW6, No.19398 PC Stephen Tenai, a Police Officer who was attached to Kikuyu Police Station at the material time, testified that he was alerted by the Assistant Chief Chemutai that a body had been found at Gikuri area, in Kikuyu. And together with other officers, they proceeded to the scene and found a body wrapped in a plastic bag and further enclosed in a yellow paper bag. He observed that the body had a blunt injury to the head. The body was subsequently removed and taken to the City Mortuary. PW6 also testified that upon returning to the station, he recorded the incident in the Occurrence Book and circulated the information. He later recorded his statement in respect of the matter.
 24. On cross-examination, PW6 stated that the body was found by the roadside and not in a concealed location. He further stated that no weapon was recovered at the scene. On further cross-examination, PW6 testified that he was not aware of any prior report of a missing person relating to the deceased. He conceded that ideally, the scene ought to have been photographed, but no such request was made before the body was removed. Nevertheless, he stated that he duly recorded the circumstances of the



- recovery in the Occurrence Book. He testified that the body appeared to have been freshly killed since the paper bag had visible blood stains. He further stated that the body was transported to the mortuary together with plastic wrappings and the ropes that had been used to tie it.
25. Upon re-examination, PW6 clarified that crime scene officers ordinarily take photographs of a scene only upon request by the Investigating Officer.
 26. PW7, No.XXX SSP Joseph Ondoro, told court that at the material time, he was the Deputy County Criminal Investigations Officer (DCIO) at Dagoretti Police Station. He stated that he received a complaint from the Officer Commanding Police Division (OCPD) alleging that Inspector Kwonyike had received Kshs.50,000/= from relatives of the Accused persons via M-pesa. He testified that he summoned Inspector Kwonyike, but he was not immediately available. He further stated that investigations were commenced and the money was subsequently refunded, thereby resolving the issue.
 27. On cross-examination, PW7 stated that the allegation regarding the money was merely reported to him and that he did not personally demand any money from anyone. On further cross-examination, PW7 testified that Inspector Kwonyike was his deputy at the time, and that it was the OCPD who initially raised the issue regarding receipt of money. He stated that once the matter was brought to his attention, investigations were initiated and the money was physically refunded in his presence.
 28. Upon re-examination, PW7 reiterated that the money was refunded through the OCPD and that he did not demand or receive any money whatsoever.
 29. PW8, No.XXX Inspector Ezekiel Oduor Oudo(Retired), testified that at the material time, he was attached to Kabete Police Station and handled investigations relating to serious offences. He testified that on 7th June, 2014, Sabet Musalia (PW2) reported that her brother, the deceased, had been missing from his residence in Regen since 4th June, 2014. PW8 stated that PW2 informed him that Ronald Nyairo and a woman had gone to her house in search of a stolen television set but they did not find it, and that as they were leaving, one of them stated that they had already killed the deceased, whom they claimed was as a notorious thief.
 30. PW8 produced the Occurrence Book Entry No. 27 of 7/06/2014 and testified that he advised PW2 to search for the deceased at mortuaries. He further circulated “a missing person report”. PW8 told court that later on the same afternoon, Ronald Nyairo and David Njuguna Mbugua were brought to Kabete Police Station on allegations of preparation to commit a felony. They were detained pending investigations but were subsequently released on cash bail. PW8 stated that PW2 later returned with her relatives and informed him that the Accused persons had been sighted and that the body of the deceased had been traced to the mortuary.
 31. On cross-examination, PW8 confirmed that the Accused persons had been arrested by officers from Regen Police Camp and were initially treated as suspects for the offence of preparation to commit a felony. He stated that they were released on cash bail at a time when the deceased’s body had not yet been found and only “a missing person report” had been made.
 32. On further cross-examination, PW8 reiterated that PW2 had indeed reported the deceased as “a missing person”. He further stated that later, when PW2 reported that the deceased’s body had been found, the Accused persons who had earlier been arrested had already been released.
 33. The Pathologist, Dr. Dorothy Njeru, testified as PW9 and stated that she conducted the post-mortem examination on the body of the deceased on 13th June, 2014. She told court that the body was identified to her by the deceased’s Uncle, Michael Aswani Mufumu (PW4), and his sister, Sabet Musalia (PW2). She testified that the body was tied with a rope around the neck and nylon rope on other parts.



- She observed multiple injuries on the body and concluded that the cause of death was asphyxia due to ligature strangulation, occasioned by the rope. She then produced the post-mortem report as Prosecution Exhibit 5 (PEX 5).
34. On cross-examination, PW9 stated that the injuries on the body were consistent with blunt force trauma. She further stated that the injuries on the hands were defensive in nature, while those on the head and hands were caused by a blunt object. The injury to the neck had been caused by a rope.
 35. On further cross-examination, PW9 testified that according to the records, the body was admitted to the mortuary on 7th June, 2014, while the post-mortem was conducted on 13th June, 2014. She stated that she did not observe blood on the body at the time of examination and that the body was on the post-mortem table and not inside a sack. She further stated that upon removal of the rope from the neck, she observed injuries which were sustained while the deceased was still alive. She confirmed that internal organs were largely normal.
 36. The prosecution closed its case and on 5th May, 2022, the Court (Hon. Kasango J) delivered a ruling wherein she stated that upon analysing the evidence of the prosecution witnesses, the prosecution had established a prima facie case against all the Accused persons to warrant each one of them to be placed on their defence.
 37. Accordingly, each accused person was placed on defence and the provision of Section 306 of the Criminal Procedure Code duly complied with whereby each accused person opted to give a sworn statement in defence. The 2nd and 3rd accused persons called three (3) witnesses in support of their cases.

Defense Case

38. The defence opened its case by calling a total of six witnesses, whose collective testimony sought to demonstrate that the accused persons neither participated in the unlawful killing of the deceased nor acted with malice aforethought, and that their implication in the offence arose from suspicion and events beyond their control rather than from any culpable conduct on their part.
39. DW1, Ronald Nyairo Bichanga is the 1st Accused and he testified on oath that at the material time, he was residing in the Regen area of Kiambu and was a husband and father of two children. He stated that on the night of 4th June, 2014, after returning home from work, he was asleep when at about 11.00 p.m. he was awakened by loud noises and shouts from people ordering people to come out of their houses, while threatening that the houses would otherwise be burnt. He got out of his house and found a crowd of people holding one of the tenants, who was being accused of having stolen a television set. He testified that the crowd claimed that the suspect was leading them to where the television had been taken. According to DW1, police officers arrived at the scene shortly thereafter, assessed the situation, and upon being informed that the suspect was alleged to have stolen a television, they arrested him and instructed everyone else to return to their houses, which he did.
40. DW1 further testified that the following day, 5th June, 2014, he went to work as usual. He also went to work on 6th June, 2014 but he received information that Police Officers were looking for him at his residence. When he presented himself, he was asked whether he knew the suspect who had been arrested on the night of 4th June, 2014, to which he responded in the affirmative, and he was asked to record a statement but instead, he was arrested. He stated that he then contacted his wife, who in turn contacted his landlord, David Njuguna, who was also arrested. DW1 testified that they were later released on cash bail, only to be re-arrested. Subsequently, they were charged with the offence of murder. He maintained that he did not know where or under what circumstances the deceased's body was recovered.



41. Under cross-examination, DW1 stated that he had lived in the plot for only about six months and used to spend most of his time at work, and therefore did not know the deceased well. He stated that he did not recognise the individuals who were in the crowd on the material night. He further stated that the deceased was tied at the front at the time he saw him, and described the deceased as his friend. On re-examination, DW1 emphasized that he did not relocate from the plot after the incident.
42. DW2, Roselyne Karambu, the 3rd Accused, testified as DW2 and told court that she is married with children and confirmed that she owned and managed the rental houses where the deceased resided as a tenant. She stated that the deceased lived in one of her houses with a woman and a child, but that the woman later left and never returned. She went on to state that on the night of 4th June, 2014, at about 10.00 p.m., she and her husband were awakened by loud noises of people shouting “mwizi” and proclaiming that thieves lived there. That accompanying the shouts were threats to burn down the houses. DW2 stated that she went outside the house and found a large crowd alleging that a television had been stolen. There was no lighting outside, but she distinctly heard the deceased pleading with the crowd not to beat him. She testified that the crowd began moving away and she and others followed them up to the main road, where they encountered Police Officers. The police inquired about what was happening and on being told that the deceased was suspected of theft, they arrested him. She stated that at that time, the deceased did not appear to have any injuries. Thereafter, she returned home.
43. It was DW2’s further evidence that on 6th June, 2014, women, who identified themselves as sisters of the deceased came to her home to inquire about the deceased’s child. She later learnt that one of her tenants, the 1st Accused, had been arrested. And together her husband, they went to the Police Station, where they were also arrested for the offence of Preparation to Commit a Felony. They were released on cash bail but were later re-arrested and charged with the present offence of murder. On cross-examination, she clarified that it was her husband who was arrested first and reiterated that on the material night, the people who came to her home were shouting “mwizi.”
44. DW3, David Njuguna Mbugua, the 3rd Accused, testified that he is married to the 2nd Accused and that together they owned the rental houses where the deceased lived. He stated that he would normally leave home for work very early. He stated that on the material night, he heard loud noises outside their house. On going out, he saw a crowd of people shouting that thieves lived there and were holding the deceased, whom they alleged had stolen a television set. He testified that he did not know the deceased well. He then followed the crowd for a short distance, and along the way a police vehicle arrived. The police arrested the deceased and took him away, after which he returned home. He denied the evidence of PW1 in its entirety, terming it false. He further testified that on 6th June, 2014, he was informed by his wife that their tenant, the 1st Accused, had been arrested. He then returned home, and together with his wife they went to the police station, where they were arrested and later released on bail for an offence related to felony. He stated that they were subsequently re-arrested and charged with the present offence of murder.
45. On cross-examination, DW3 stated that on the material night, he heard noises and went outside the house where he saw the deceased seated on the floor. He stated that there were no children present at the time. He reiterated that the deceased was taken away in a police vehicle and that he himself was later arrested and released on cash bail. He firmly denied any involvement in the death of the deceased.
46. DW4, Stanley Njogu Njuguna, stated that he is an uncle to the 3rd Accused and that on 15th June, 2014, he was informed that the 2nd and 3rd Accused persons had been arrested. He paid a sum of Kshs. 20,000/= as cash bail for them and was issued with a receipt, but despite this, they continued to remain in custody.



47. DW5, Mary Mambo Njuguna, testified that the 3rd Accused is her son and is married to the 2nd Accused. She stated that they were arrested on 6th June, 2014 and that she made efforts to raise money in order to secure their release from custody.
48. DW6, Newton Kiriithi Mugambi, testified that the 2nd Accused is his sister-in-law and that he knew both the 2nd and 3rd Accused well. He stated that they were arrested and taken first to Regen Police Station and later to Kabete Police Station, but he did not personally see them at the station.
49. The defence³ closed their case and the parties were urged to file and serve their respective submissions to argue their cases.

Analysis and Determination

50. Having carefully considered the entire evidence on record, the rival submissions by learned counsel for the accused persons and the prosecution, alongside the applicable law, this Court is now called upon to determine whether the offence of murder contrary to Section 203 as read with section 204 of the Penal Code has been proved against each of the accused persons beyond reasonable doubt.
51. Section 203 of the Penal Code defines murder as follows:-

“ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
52. From this definition, the prosecution bears the legal burden of proving, beyond reasonable doubt, three critical and indispensable elements before a conviction for murder can properly lie. First, it must be established that the deceased indeed died and that the death occurred as a result of a specific and identifiable cause. Second, the prosecution must demonstrate that the death was occasioned by an unlawful act or omission. Third, and most crucially, it must be shown that the unlawful act or omission that caused the death was committed by the accused person or persons, and that in so acting, they were possessed of malice aforethought as contemplated under Section 206 of the Penal Code.
53. It is only where all these elements are proved cumulatively, and to the required standard, that criminal liability for the offence of murder may attach. I now proceed to examine each of these elements sequentially in light of the evidence on record.

(a) Proof of Death and Cause of Death

54. There is no controversy that the deceased, Paul Kibisu Musalia, is dead. The fact of death was proved beyond any reasonable doubt through the testimony of PW2, PW4, and PW9, all of whom either identified the body or witnessed it at the mortuary. Most critically, PW9, Dr. Dorothy Njeru, a qualified pathologist, conducted the post-mortem examination and produced the post-mortem report as PEX 5, which indicates the cause of the deceased death.
55. PW9's evidence was clear, consistent, and remained unshaken on cross-examination that she had established that the deceased died as a result of asphyxia due to ligature strangulation, caused by a rope tied around the neck. The cause of death was therefore proved by expert medical evidence. Accordingly, the first element of the offence of murder has been proved beyond reasonable doubt.



(b) Whether the Death Was Caused by an Unlawful Act

56. The second element requires the Court to determine whether the death of the deceased resulted from an unlawful act or omission. The evidence before this Court leaves no doubt that the deceased did not die of natural causes, accident, or self-inflicted harm.
57. The deceased's body was found tied with ropes, wrapped in plastic and a paper bag, and dumped by the roadside. The pathologist's findings of ligature strangulation and blunt force trauma clearly point to a deliberate and unlawful act. Strangulation, by its very nature, is an intentional act directed at causing death or grievous harm. There is no legal justification known in law that would excuse such conduct hence the second element of the deceased's death being unlawful had therefore been fully satisfied.

(c) Whether the Accused Persons Caused the Death of the Deceased

58. This is the most contested and determinative issue in this case. The prosecution's case against the Accused persons rested primarily on direct eyewitness testimony, particularly that of PW1, a child of tender years but one who was subjected to *voire-dire* examination to confirm this ability and understanding the importance of speaking the truth and found competent. His evidence was corroborated in material particulars by the evidence of PW2 and PW3.
59. PW1 testified that on the material night, the three Accused persons went to his house, found his father, and took him away. He knew them well, having lived in the same compound with them for about a year. Importantly, PW1 testified that there was electricity lighting inside the house, which enabled him to clearly see and recognize them. He further stated that one of the Accused was armed with a panga, another with a metal rod, and that it was the 1st Accused who spoke to the deceased. After that night, PW1 said he never saw his father again until his burial.
60. This Court is satisfied that PW1's evidence placed the Accused persons at the very beginning of the chain of events that culminated into the disappearance and subsequent death of the deceased. Thus, the doctrine of "last seen" squarely applies here since where an accused person is the last person seen with the deceased while he/she is alive, and the deceased is later found dead, the accused bears an evidential burden to offer a plausible explanation of what could have happened to lead to death.
61. The explanations offered by the Accused persons were mutually consistent among themselves but sharply contradicted the prosecution's evidence. They claimed that the deceased was arrested by police and taken away alive. However, I find this assertion is untenable for several reasons. Firstly, no Police Officer testified that the deceased was arrested alive from his house on the night of 4th June, 2014 while he was alive. PW6, the officer who recovered the body, testified that the body was found on 7th June, 2014 and it was tied with ropes, wrapped and dumped beside the road. He did not testify to having arrested the deceased while he was alive. Secondly, PW8 confirmed that when the Accused persons were first arrested, the deceased was merely recording "a missing person". Thirdly, the manner in which the body was found, tied, wrapped, and dumped, is wholly inconsistent with lawful police arrest.
62. Most tellingly, PW2 and PW3 testified that the Accused persons went to their house that same night and expressly stated that they had killed the deceased. These were confessions made voluntarily to civilians, not coerced statements to police officers. In the case of *Tuwamoi –vs- Uganda* [1967] EA 84, the Ugandan Court of Appeal held that an extra-judicial confession may be relied upon if it is proved to be voluntary and truthful. In this case, there was no evidence of fabrication or motive for PW2 and PW3 to falsely implicate the Accused persons.



63. The defence advanced that PW2 and PW3 were mistaken or motivated by malice finds no support in the entire evidence. The two witnesses were consistent, unwavering, unshaken in the evidence and had not demonstrated grudge against the Accused persons. Their evidence was further corroborated by PW1's testimony and by the Post mortem findings.

(d) Common Intention

64. Even assuming, for argument's sake, that it was not proved which of the Accused persons delivered the fatal act, Section 21 of the Penal Code on common intention becomes relevant. The evidence shows that the Accused persons acted jointly, were identified as having gone to the deceased's house, together and removed him from there, and participated in events that led to his death and further identified by PW2 and PW3 as having gone to PW2's house together and informed them that they were looking for a Television Set which the deceased had stolen and kept there and later casually told them that they had killed him and they could go for his belongings and child. It will be noted that the 2nd and 3rd accused told court that when they heard noise and got out of their house on the alleged night, they heard the deceased plead to be left alone and that he would take the crowd where the Television was. In this Court's view, common intention may be inferred from the conduct of the accused persons and the circumstances of the case and does not necessarily require proof of a pre-arranged plan and may develop in the course of events.
65. The co-ordinated actions of the Accused persons before, during, and after the incident, including their visit to PW2's house and their statements therein, irresistibly point to a shared purpose hence this Court is satisfied that the Accused persons acted with common intention and are therefore equally culpable.

(e) Malice Aforethought

66. Malice aforethought is defined under Section 206 of the Penal Code and includes an intention to cause death or grievous harm, or knowledge that the act would probably cause death. The nature of the injuries, particularly ligature strangulation, demonstrates a clear intention to kill or to cause grievous harm. Strangulation requires sustained force and cannot be accidental. The subsequent concealment of the body by tying it, wrapping it, and dumping it further reinforces the presence of malice aforethought on the part of the perpetrators of this heinous act.
67. In the well celebrated case of Republic –vs- Tubere S/O Ochen [1945] 12 EACA 63, the Court set out the factors for inferring malice aforethought and they include the nature of the weapon used, the manner in which it was used, and the conduct of the accused before and after the attack. Applying these principles to the present case, this court is satisfied that malice aforethought was proved beyond reasonable doubt by the prosecution.

Conclusion and Final Determination

68. Accordingly, a total analysis leads this Court to find that each of the Accused person is guilty of the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code and convicts them accordingly.

It is so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 14TH DAY OF JANUARY, 2026.

D. O. CHEPKWONY



JUDGE

