

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL CASE NO. 36 OF 2016

REPUBLICPROSECUTOR

VERSUS

DERRICK INJORI INAWENDI.....ACCUSED

RULING ON CASE TO ANSWER

1. The accused person is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence are that on diverse dates between 12th and 15th May 2016, at Kokwas estate in West Indies within Uasin Gishu County, he murdered one **Vicky Chelagat Lelei**.
2. The accused is represented by **Mr. Omboto Advocate**, whereas the State is presently represented by **Prosecution Counsel Ms. Muriithi**. The accused took plea on 25/05/2016 before **Kimondo J** and pleaded not guilty. The case then proceeded to trial wherein the Prosecution called 11 witnesses. **PW1 - PW4** testified before **Sewe J** upon whose transfer, the matter was taken over by **E. Ogola J**, who took the evidence of **PW5 - PW6**. Upon **Ogola J's** transfer, I took over the case and **PW 7-PW11** all testified before myself. The Prosecution then closed its case on 1/12/2025, a whole 9 years after the trial commenced!
3. I may just mention that in both instances of taking over the case from previous Judges, directions were taken under **Section 200(3)** of the **Criminal Procedure Act**. In both instances, the defence elected not to ask for recall for any witnesses, and to therefore proceed with the trial from where it stopped.
4. I may also state that initially, the Charge Sheet described the victim as "**an unknown African female adult**" but after she was positively identified, the same was subsequently amended and a fresh Charge Sheet indicating the name of the deceased was presented.
5. I will now recount the testimonies of the Prosecution witnesses
6. **PW1** was one **Matthew Tonje** who testified that on 18/05/2016, he received information that the deceased herein, his niece, had disappeared, that upon searching for her with no success, he checked with the police, who showed him a dead body at the mortuary which he identified as that of the deceased. He testified that he later attended the post mortem exercise

in which he identified the body to the doctor. He then stated that the deceased was around 25 years in age and he identified a photograph of her national identity card. Under cross-examination by **Mr. Omboto**, he stated that during the post mortem, he noted that the body was swollen on the face. In re-examination, he testified that the body colour had changed to black, and he also saw injuries on the neck and hands, which had bruises, and the neck also had a cut wound.

7. **PW2** was **Gladys Jebet Lelei**, who testified that on Friday, 13/05/2016, she was with the deceased (her sister) on Friday, 13/05/2016, at her place of work, and they parted ways at around 5.30 pm, that the deceased promised to visit her if she did not travel to Nakuru, and that as the deceased did not visit as promised, she assumed that she had travelled to Nakuru as planned. She testified that the deceased did not also get in touch with her on Sunday, which was unusual, and she could not also be reached on phone. She testified further that she still could not reach the deceased on Monday, not even through her friends, and she also learnt that the deceased had not reported to work. She testified that together with others, she went to the house of the deceased but found it locked, and even after seeking assistance and eventually accessing the house, they did not find the deceased inside. She stated that on Tuesday, they reported the matter to the police who asked them to check at the morgue as an unidentified body had been recovered, that which some relatives they did so, and upon reaching the morgue, they were shown the body, which they indeed confirmed was that of the deceased. She stated that on Wednesday, she attended the post mortem exercise, and that the body was in a sack. She then identified a photograph thereof. She stated further that on Friday, 20/05/2016, she accompanied the police to the house of the accused, which they found to be in a mess with items, with a bed broken, and the deceased's shoes were on the floor. She then identified in Court a photograph of the scene, together with the shoes. She testified further that she noticed a hole in the ceiling, a photograph whereof she also identified, and stated that when the police checked the hole, a maroon top belonging to the deceased, and which the deceased was wearing on Friday when they last met, which she also identified in Court, fell off from the ceiling. She also identified further personal items belonging to the deceased that she testified, were all recovered from the home, including, a bag, a pair of trousers, sandals, handkerchief, make-up kit, purse, the identity card, a bunch of keys, black trouser, and a handkerchief. She also stated that she did not know the accused person before the incident. In cross-examination, she stated that both herself and the deceased used to operate clothes selling businesses. She stated further that at the post

mortem, she noted that the body was swollen, but she did not see any blood thereon. She further stated that she did not also see any blood stains at the house of the accused.

8. **PW3** was **Grace Nyamita**, who testified that the last day she saw the deceased was on 13/05/2016 at their place of work where a sister of the deceased had visited and with whom the deceased left, while dressed in black trousers and a maroon top and black trousers. She testified that the deceased could not be reached on Monday after she failed to come to work, and inquiries from friends of the deceased and the sister did not bear fruit. She stated that in the circumstances, on Tuesday, they went to the deceased's house but found it locked, and even after they gained access, they still did not find the deceased inside, that they then reported to the police who directed them to the **Moi Teaching and Referral Hospital (MTRH)** mortuary to check an unidentified body that had been taken there, they went to **MTRH** and indeed confirmed that the body was that of the deceased, upon which they returned to inform the police. She stated further that the body was in a sack, and that she, too, attended the post-mortem exercise, during which she noted that the body had no visible injuries. In cross-examination, she stated that the deceased had not introduced her to any boyfriend and that she had never seen the accused before. She further stated that they were 9 people, including the deceased's sister when they went to the house, and the door was opened for them by a blacksmith that the sister brought. She also stated that at the post-mortem, she noted that the body was swollen and blood was oozing from the nose but she, too, did not see any visible injuries.

9. **PW4** was **Damaris Wangari King'ori**, who testified that she lived in the same plot as the accused, with her house closest to the gate. She stated that on the night of 16/05/2016, at around 9.00 pm while cooking, with her window open, she noticed a commotion outside, when she checked, she saw 5 figures of people speaking in low tones but she could not recognise them as it was dark with no security lights, that she hurriedly closed the window but she then heard the voice of one "**Amos Juma**" (**PW5**), the caretaker of a neighbouring plot, calling out her name, and when she inquired what the issue was, the caretaker told her that someone had dropped some heavy object at the gate and entered the plot in which **PW4** lived, and they suspected that the person was within the compound. She testified that she then began screaming, raising alarm, neighbours came out and switched on security lights, she, too, came out and upon checking, they found that the dropped object was a sack tied up in a manner that revealed the shape of a human being and it was emitting a foul smell, nobody touched the sack and they then called the police, who came and conducted searches in all the 10 houses in the plot. She testified that the police, upon reaching house number 10 occupied by the accused person, who had not come out with other neighbours when **PW4**

screamed, the accused (the occupant thereof) refused to open, and only did so when compelled to open by the police, that the house was also emitting the same foul smell as the one emitted by the contents of the sack dropped outside, and the accused was then arrested. She stated that she is the one who had rented out the house number 10 to the accused because the landlord had given her authority to rent out houses, and the accused had stayed there for about 2 weeks before the incident. She testified that the police then untied the sack and they found the body of a woman inside, and they took photographs, she did not enter the accused's house but she could see from the open door that the house was in a mess, clothes and beddings were scattered all over the floor, and that the accused produced a bag that had a woman's clothes and 2 pairs of shoes. She then identified the said items in Court. In cross-examination, she stated that the landlord is her husband.

10. PW5 was Amos Juma. He testified that on 15/05/2016, at around 9.00 pm, while escorting a friend (**PW6**) who had gone to visit him, upon reaching the gate to **PW4's** plot, he saw somebody coming out of the plot pulling a sack, when he asked the person whether there was any problem, the person told him there was none, but the person pulled the sack inside the plot and ran away. He testified that he called **PW4** to come out, and **PW4** started wailing and neighbours came. He described the person as well-built and bearded, and stated that the police were then called and when they arrived, they conducted searches in the houses, that in one of the houses, they found sandals, which he identified in Court, and that the house was also smelling. He testified that the police then opened the sack and inside it found the body of a female wrapped in a bedsheet, he did not see any injuries but there was blood on the nose, and that the police then arrested the accused and also took away the body before returning a few days later and taking photographs inside the house occupied by the accused, where they also recovered a bag from the ceiling. He stated further that he did not know the accused person before but identified him in the dock as the person he saw pulling the sack as there was security lighting at the gate.

11. PW6 was Peter Kemboi. He stated that on 15/05/2016, at around 9.00 pm, while coming from **PW5's** house to get water, they came across someone coming out of the gate to **PW4's** plot with a heavy sack, that upon seeing them, the man turned back into the plot, and that he did not speak to the man, whom he did not know before. He testified that the police later came and opened the sack, and inside it they found the body of a female, and he saw the body which had no injuries. He then identified the accused in the dock as the man he saw pulling the sack that night. In cross-examination, he stated that there were security lights at the gate, although there was none inside the plot, and that when the accused was brought out

by the police, he immediately recognized him as the man who was pulling the sack at the gate, although he was now in different clothes.

12. PW7 was **Anditi Benard Collins** from the Government Chemist whom the Court allowed to testify on behalf of his colleague, one **Stephen Masinde**, who prepared a toxicology report, after PW7 satisfied the Court that he had worked with the said **Stephen Masinde** for 6 years, and was familiar with his signature, and that he was held up in another Court. He stated that according to the Report, the deceased had a high level of methanol and ethanol in her blood samples, a level that is known to be fatal, and which could have contributed to the death of the deceased. He then produced the Report. In cross-examination, he stated that the deceased appears to have consumed alcohol containing methanol or ethanol or any other such poisonous substance. He described methanol as more lethal than ethanol as it can either kill or leave one blind, and stated that in the case of the deceased, the methanol was very high, and that its effect also depends on the circumstances of the individual.

13. PW8 was **Dr. Macharia Benson**, a Pathologist at the **MTRH**. He stated that he conducted the autopsy on the deceased on 18/05/2016, and observed that the body had partial decomposition involving the head and the upper limbs which had greenish discoloration, the brain tissue showed signs of decomposition, and there were 5 small 1 cm bruises on the right limb, and 3 cm bruise on the left upper limb. Regarding internal examination, he testified that the lungs had fluid, and there was an extensive 8 x 5 cm bruise of the front of the head, and that he took samples of the lung, brain and heart tissue and sent one batch to the Investigating Officer for onward transmission to the Government Chemist and retained one for his own examination. He reported his conclusion on the cause of death to be “**asphyxia (lack of oxygen) following a head injury due to blunt force trauma**”, and then produced the Post Mortem and the Histological Reports. In cross-examination, he agreed that methanol can cause asphyxia, just like any other chemical but he was emphatic that in this case, the cause of death was death by asphyxia caused by head injury. He, too, however confirmed that methanol could have contributed to the death.

14. PW9 was **Captain Simon Likuyani**, who testified that around 10.00 pm on 15/05/2016, he was requested by **Corporal Nyamwala Oudia** to proceed to West Indies, Kokwas to attend to a case of murder. He testified that he went there with other officers and on arrival there, they were shown the body of the deceased wrapped in a white manila white sack next to the gate, the deceased had a black top, and the head was swollen with blood oozing from the nose, and with signs of decomposition. He stated that he took several photographs, that 2 days later, he was requested by **Constable Kuloba (PW10)** to re-visit the scene, which he

did with **Constable Kuloba (PW10)**, who showed him several items that had been allegedly recovered from the bedroom of one of the houses within the estate, namely, a national identity card recovered from the ceiling, and which bore the name of the deceased, assorted shoes and a bag containing the said items. He then produced 17 photographs of the scene and the Certificate thereto. In cross-examination, he stated that there was only one gate to the plot.

15. PW10 was Police Constable Patrick Kuloba who testified that he investigated the matter herein together with one **Corporal Imbai** with whom, together with **PW11 (Sergeant Oudia)**, they visited the accused person's house on 20/05/2016, during which time, the accused was in custody. He stated that they also went with a Crime Scene Officer to document the scene, that the house was number 10 in the subject plot and they were directed thereto by the landlady, one **Damaris (PW4)**, and the caretaker, the house was disturbed and messy and had a broken bird, and in the roof ceiling, there was a hole which upon checking, they noted a number of items placed there and they took photographs thereof before removing them. He described the items as a black handbag, a pair each of ladies' black and brown, a black pouch, a pair of masai sandals, marron flowered blouse, black jeans trousers, and a bunch of keys, which all a sister of the deceased, one **Clariss**, who was also present, positively identified as belonging to the deceased. He stated further that the plot was occupied mostly by college students who were baying for the blood of the accused to lynch him when they (investigators) went to the scene. He then produced the items as exhibits together with an inventory thereof. In cross-examination, he stated that it is the accused who told him that he had a romantic relationship with the deceased. He also stated they did not take along the accused to the scene visit as the college students were very rowdy and would have lynched him. He also confirmed that bodily samples from the deceased were taken from the deceased and were taken for toxicological tests, which revealed that the body had both ethanol and methanol chemicals and that the methanol concentration was capable of fatally affecting a human being and could have thus contributed to the death of the deceased herein.

16. PW11 was Sergeant Fredrick Nyamwala Oudia formerly previously stationed at the Eldoret Police Station. He stated that he received a phone call on 15/05/2016 at about 2200 hours, from a person who introduced herself as **Damaris Wangari Kin'gori (DW4)** who told him that one of her tenants was seen by a plumber, one **Amos Juma (PW1)**, carrying suspicious luggage in a sack, that she raised alarm and the person ran away to his house, about 14 metres away, and that when they checked the luggage they noted that it was the

body of human being inside. **PW11** testified further that he went to the scene accompanied with other officers and on arrival, the suspect (accused person herein), a 31 years old male, was identified and they arrested him inside his house. He stated that when they opened the sack, they found the body of a female killed approximately 3-4 days back as it was not fresh, that the body was at the front of the building, within the compound, and it had injuries on the neck, was swollen and was naked with only the upper part covered with a dress. He testified that he then informed the Officer Commanding the Station (**OCS**) who came with the Crime Scene team who then took over, and afterwards, the body was removed **MTRH**, and the accused was later charged in Court. He then identified the accused seated in Court. In cross-examination, he stated that he was the arresting officer.

17. At the close of the prosecution's case, I gave the parties liberty to file written Submissions on "case to answer" but both sides informed the Court that they would not be filing any.

Determination

18. Under **Section 306** of the **Criminal Procedure Code**, this Court is obligated, upon close of the Prosecution case, to rule on whether a case to answer has been established against the accused person. **Section 306(1)** and **(2)** provide as follows;

(1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence, shall after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit recording a finding of not guilty.

(2) When the evidence of the witnesses for the prosecution has been concluded the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court on his own behalf or make unsworn statement and to call witnesses in his defence

19. In view thereof, at this juncture, what the Court is called upon to do is simply to determine whether, at this stage, based on the evidence adduced by the 11 witnesses, the Prosecution has established a *prima facie* case to warrant the accused to be placed on his defence to answer to the charge of murder. Needless to state, the burden of proof to establish the case against the accused lies on the Prosecution throughout the trial. At no point does that burden shift to the accused reason being that an accused person's constitutionally guaranteed rights

include the right to remain silent, the right to adduce and challenge evidence, and the right not to give any incriminating evidence. However, at this stage, the Prosecution is not expected to have proved the case beyond reasonable doubt. The measure is for a *prima facie* case to be established.

20. At this stage therefore, the Court is only considering whether the accused person has “*a case to answer*”, which term was aptly described by **G. Dulu J** in the case of **Republic vs Joseph Shitandi & Another (2014) eKLR** as follows:

“A case to answer is a case where if the accused keeps quiet, the evidence of the prosecution should be such that a conviction will result.”

21. The procedure in determining whether an accused has a case to answer was discussed in the case of **Republic vs Samuel Karanja Kiria (2009) eKLR** where **J.B Ojwang J** (as he then was) stated the following:

“The question at this stage is not whether or not the accused is guilty as charged but whether there is cogent evidence of his connection with the circumstances in which killing of deceased occurred. That the concept of prima facie case dictates as a matter of law that an opportunity created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled ... The Court of Appeal in Criminal Appeal No. 77/2006 expressed that too detailed analysis of evidence stage at no case to answer stage is undesirable if the court is going to put accused on his defence as too much details in the trial court’s ruling could then compromise the evidentiary quality of the defence to be mounted.”

22. The trial Court is thus cautioned that it should not, at this stage, make definitive findings should it conclude that the accused has a case to answer. In this regard, in **Festo Wandera Mukando vs Republic [1980] KLR 103**, **E. Trevelyan J** stated as follows:

“..... we draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, and an extreme case, may require an appellate court to set aside an otherwise sound judgment. Where a submission of “no case” to answer is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the count or counts concerned.”

23. In this case, the Pathologist (**PW8**) formed the opinion that the cause of death was “*asphyxiation due to head injury from blunt force trauma*”. In other words, he believes that the deceased was hit with a blunt object on the head. **PW5** and **PW6** testified that it is the accused they saw carrying and dropping the sack containing the body of the deceased, and who ran back into the subject plot when they sought to confront him. **PW2**, **PW5**, **PW9**, and **PW10** all also testified that personal belongings and clothing belonging to the deceased were recovered hidden in the roof ceiling of house number 10 occupied by the accused. They also testified that it is inside that same house that the accused was found and arrested on the same night shortly after the body was dropped at the gate. **PW10** also stated that it is the accused who told him that he had a romantic relationship with the deceased.

24. Upon considering the evidence on record and testimonies of the witnesses as set out above, and without delving deeply into the merits thereof, all I would state for now is that although there is no eye-witness to the killing of the accused, there is testimony allegedly establishing the death and cause thereof, there is testimony allegedly placing the accused at the scene of crime at the material time, and there is also testimony allegedly establishing some kind of link between the accused and the deceased. There is also witness’ alleged accounts of the chain of events after the body was allegedly dropped at the gate of the subject plot. The evidence on record, if true, may therefore be deemed to implicate the accused person in the commission of the assault. Although all these allegations may still be debunked in the course of the defence trial, they lay a basis for the Prosecution case on a *prima facie* basis.

25. I therefore only state my finding to be that the Prosecution has established a *prima facie* case to the Court’s satisfaction. Needless to state, this does not at all indicate that the accused has been found guilty, far from it, all it means is that there is some evidence of his possible involvement with the circumstances in which the death occurred, which circumstances call for him to be afforded an opportunity to give his side of the story, should he wish to do so.

26. Accordingly, I find that the accused has a case to answer. He is therefore placed on his defence.

27. Pursuant to the finding above, the accused is now informed of his rights under **Article 50(2) (i) and (k) of the Constitution**, and also under **Section 306(2)** as read with **Section 307 of the Criminal Procedure Code** to address the Court. Accordingly, he is informed, and it is explained to him, in the presence of his Advocate, that he has a right to address the Court

either personally or by his Advocate and to give evidence on his own behalf or to give unsworn statements, and to call witnesses in his defence.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 13TH DAY OF FEBRUARY 2026

.....
WANANDA JOH R ANURO
JUDGE

Delivered in the presence of:

Accused present physically in Court

Ms. Omboto for the Accused

Ms. Muriithi for the State

Court Assistant: Brian Kimathi