



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYANDARUA
CRIMINAL CASE NO. 44 OF 2023

REPUBLIC.....PROSECUTOR

VERSUS

BONFACE LESERETI LISANDO.....ACCUSED

JUDGMENT

1. Bonface Lesereti Lisando is charged with murder contrary to section 203, as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 17th day of March 2023, in Ndaragwa Forest, Murichu location, within Nyandarua County, they murdered Ndabani Leshakole Loundi alias Dafala.
3. The herdsman, employed by Charles Mwangi Gachengo, went to graze in Ndaragwa forest on the morning of 17 March 2023 but did not return home, and the sheep he was tending were also missing. After an extended search, his body was discovered in the forest. On 18 March 2023, the accused was arrested while driving the missing sheep and was subsequently charged with the offence.
4. Bonface Lesereti Lisando, the accused, argued that he was arrested while at a place where he had gone to cut grass. He mentioned that he was spoken to in a language he did not understand and denied any involvement in the offence.
5. The issues to be determined are:
 - a) What was the accused doing at the time of arrest?
 - b) Whether the accused has been connected to the offence; and
 - c) Whether the offence of murder was proved against any or all the accused.
6. Charles Mwangi Gachengo (PW2) stated that he had hired the deceased as his herdsman. On 17 March 2023, he went to graze cattle and sheep in the Ndaragwa forest. By 5 p.m., he had not returned, so he searched for him in the forest without success. He then involved others in the search, but they could not find him. Around 8 p.m., his eight cattle returned home on their own, but the 48 sheep and the herdsman remained missing. The incident was reported to the police.

7. PC Charles Mirugi (PW3) was assigned to investigate the case of livestock theft on 17 March 2023. The following day, while they were tracking the 48 sheep, they received information that some sheep had been seen at Karwao village, being driven from the Ndaragwa direction. When they reached Karwao, they intercepted three people who were driving the 48 sheep. When the trio were asked to stop, they ran away. They managed to catch up with the accused.
8. The accused, after his arrest, claimed the sheep were his, but when the complainant arrived, he (PW2) identified them as his that were missing.
9. The accused stated that he went to cut grass at Karaya Ranch. He saw a police vehicle at the fence, passed by it, but was then called back. The officers took his grass and placed him in a vehicle. He was taken to a location with some goats. He believed he was arrested because of the grass he had.
10. Charles Mwangi Gachengo (PW2) testified that he found the accused under arrest with his missing sheep. This evidence corroborates that of PC Charles Mirugi (PW3).
11. The evidence on record displaced the defence of the accused. I find that he was found with the other two with the stolen sheep.
12. John Ndegwa Karenga (PW1) was grazing in the Ndaragwa forest on 23 March 2023 when his dogs began barking. On checking, he found that a human body had caused them to bark. He recognised it as that of the deceased herein. He reported the discovery.
13. When Dr. Nyachae performed the post-mortem, he concluded that the cause of death was head injury resulting from blunt force trauma. The deceased had fractures in the right frontal, temporal, and parietal skull regions. This evidence definitively ruled out an accidental death.
14. Bonface Lesereti Lisando, the accused, was found with the stolen sheep hours after they had been stolen from the deceased. This is very recent to the robbery and the killing of the deceased. In the case of **Isaac Ng'ang'a Kahiga, alias Peter Ng'ang'a Kahiga vs Republic, Criminal Appeal No. 82 of 2004**, the principles of the doctrine of recent possession were laid out as follows:

... It is trite that before a court of law can rely on the doctrine of recent possession as a basis of conviction in a criminal case, the possession must be positively proved. In other words, there must be positive proof, first: that the property was found with the suspect, secondly that the property is positively the property of the complainant; thirdly, that the property was stolen from the complainant and lastly, that the property was recently stolen from the complainant. The proof as to time, as has been stated over and over again, will depend on the easiness with which the stolen property can move from one person to the other. In order to prove possession there must be acceptable evidence as to search of the

suspect and recovery of the allegedly stolen property, and in our view, any discredited evidence on the same cannot suffice no matter from how many witnesses.

15. The only logical conclusion is that the accused was part of the group of robbers who murdered the deceased and stole the sheep he was caught with.
16. To convict for murder based on the evidence on record, the prosecution must prove the existence of malice aforethought. In **Black’s Law Dictionary, 10th Edition**, malice aforethought is defined as:

The requisite mental state for common-law murder, encompassing any one of the following (1) the intent to kill (2) the intent to inflict grievous bodily harm (3) extremely reckless difference to the value of human life (the so-called “abandoned and malignant heart”), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule).

17. Section 206 of the Penal Code gives instances when malice aforethought may be proved. It provides:

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;

(d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

18. After reviewing the evidence, I conclude that the prosecution has proven beyond a reasonable doubt that the accused committed the murder. As a result, I find him guilty of the crime.

Delivered and signed at Nyandarua, this 26th day of February 2026

KIARIE WAWERU KIARIE
JUDGE