

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CRIMINAL CASE NO. 24 OF 2017

REPUBLIC.....

.....PROSECUTOR

VERSUS

AMOS

OKOTH.....

ACCUSED

JUDGMENT

1. The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code (Cap 63) Laws of Kenya. The particulars of the charge are as per the charge sheet.
2. The charge was read to him and he pleaded not guilty thereto and the case proceeded to full

hearing. The prosecution case is that on the night of 25th and 26th December 2015, (PW1) No. 235232 C.I. Gilbert Mabunga, in the company of other police officers'; PC Okoth, PC(W) Orwa and PC Salim went on patrol duties within Mukuru Kwa Njenga to North Airport road.

3. That, on reaching AA Headquarters, they met five (5) people running and on spotting the police vehicle they stopped and informed the police officers that, there were muggers near Bakhita Catholic Church. That PW1 directed them to go and report the incident at Villa Franca Police Post.
4. That on reaching St Bakhita the officers saw a group of six to seven people whom they challenged to identify themselves and suddenly they heard a gunshot from the group and when they realized that they were police officers, those people ran towards directions.

5. PW1 C. I. Mabonga testified that as he was running after the suspects, he turned back after fifteen metres and looked back and saw confrontation between PC Okoth and two people.
6. That, he left the person he was pursuing and went back to PC Okoth and as he neared, he heard another gunshot. He went to where PC OKoth was standing and found a male adult on the ground. That, beside him was a homemade gun with two rounds of ammunition.
7. PW1 informed the team to cordon off the area, and informed the OCS Embakasi of the incident. The OCS, arrived with a team of officers including the scene of crime personnel who processed the scene and took the body.
8. That investigation was commenced and confirmed after post mortem that the deceased was shot dead and that the gun used was in possession of

the accused. The accused was arrested and charged accordingly.

9. At the conclusion of the prosecution case, the accused was placed on his defence and he testified that he was on patrol in the company of other officers. That they were notified of muggers and shortly after saw 6 youth. That PW1 challenged them to identify themselves and they defied and dispersed into different directions.

10. That two people confronted him and wrestled him to the ground and when he woke up he saw one advance towards him as the other shouted, "uua, uua" and he fired one shot at the hand of the attacker but it hit him on the head. That a homemade gun with two rounds of ammunition was recovered and after investigation he was charged as herein.

11. At the close of the hearing the prosecution did not file any submissions but relied on the evidence

on record and submissions filed on the case to answer.

12. The defence in submissions dated 6th August 2025, argued that to establish the offence of murder, the prosecution is required to prove malice aforethought and the actus reus of killing.

13. The defence relied on the case of; Republic v Andrew Muecha Omwenga [2009] KEHC 1573 (KLR) where the High Court held that the prosecution is required to prove beyond reasonable doubt the ingredients of the offence of murder being; the death of the deceased and the cause of that death; that the accused committed the unlawful act which caused the death of the deceased and that the accused had the malice aforethought.

14. The defence further submitted that the cause of the death herein is not contested as PW5 who

examined the deceased's body formed the opinion that the cause of death was head injury secondary to a single gunshot wound to the head.

15. On whether the accused committed the unlawful act which caused the death of the deceased; the defence argued that he was acting in self-defence and referred the court to the persuasive case of; *Citizens Against Violence (CAVI) & 14 Others vs Attorney General & 3 Others [2020] eKLR* where the High Court held that the use of lethal force or firearms by the police or other state agents was only permissible in the most extreme circumstances, such as self-defence or the defence of others from serious bodily harm or death.

16. Further, reliance was placed on the case of; *Wilfred Mwiti v Republic [2021] KECA 1076 (KLR)* where the Court of Appeal cited with approval its earlier decision in *Ahmed Mohammed Omar & 5*

Others vs. Republic [2014] eKLR and held a police officer cannot wait until he is struck before striking in self-defence and that they perform their duties in circumstances that are often fraught with danger to their lives.

17. The defence cited Section B (1) of the Sixth Schedule to the National Police Service Act, 2011 which provides circumstances under which firearms can be used by police officers and include self-defence or in defence of others against imminent threat of life or serious injury.

18. The defence submitted that in the instant case, the accused was on patrol when he went to investigate a claim of muggings around St. Bakita Catholic Church. That he was accosted by two men including the deceased who wrestled him to the ground. That while on the ground he had somebody shout “uaa” translated “kill. Kill”. That he noticed the deceased who had a homemade

gun and in quick defence, he drew his gun and shot the deceased.

19. The defence argued that while the homemade gun was not presented before the court it could be clearly be seen among the crime scene photographs produced as PExh 6d, on the side of the deceased. Further, PW1 and PW2 admitted to seeing the gun at the scene near the body while PW12, the Investigator from IPOA admitted that the report received contained information on recovery of a homemade gun. Moreover, PW10 and PW11 were at the scene and should have noticed if the gun was planted or not.

20. The defence further argued that PW1, PW10 and PW11 testified that the deceased was in the company of another man when the accused was attacked but escaped when the gun went off. That the said person was known to both PW10 and PW11 however, the prosecution never called them

as witnesses despite the court issuing summons and arrest warrants. That this leads to the conclusion that if the said person had given evidence it would have been prejudicial to the prosecution's case as held in the case of; Bukenya vs Uganda [1972] EA 549.

21. On whether the accused had malice aforethought, the defence referred the court to the case of; Republic v Tubere s/o Ochen [1945] 12 EACA 63 where the Court of Appeal held that malice aforethought can be established by considering the nature of the weapon used, the part of the body targeted, the manner in which the weapon was used and the conduct of the accused before, during and after the attack.

22. The defence argued that in the instant matter the accused used a Jericho pistol Serial No. 444838859 with 15 rounds of 9mm ammunition which he had been issued with as per the Arms

Movement Register produced as P.Exh 1 and was therefore the only weapon he could conveniently access.

23. Further, at the time he shot the deceased, he had been wrestled to the ground and was trying to get up but the deceased was standing over him. That in the circumstances, the head was the only part of the body that was in the peripheral vision of the accused hence the automatic target. That PW5 gave the cause of death as a head injury secondary to a single gunshot wound to the head an indication that the accused was only trying to defend himself.

24. Lastly, that after the shooting, the accused person showed no ill will as he stood at the scene and waited for the relevant authorities and proper transportation of the body to the mortuary.

25. The defence referred the court to the case of Njeru v Republic [2006] eKLR where the Court of Appeal in allowing the appeal acquitted a police officer convicted for manslaughter who acted in self-defence stating that the killing of a person can only be justified and excusable where it was in the course of averting a felonious attack and no greater force than necessary was used.

26. The defence submitted that the prosecution failed to prove beyond reasonable doubt all the material elements of the offence of murder and relied on the case of; Republic v Musau & another [2025] KEHC 574 (KLR) where the High Court quoted with approval the decision in Republic v Daniel Charo Katana [2021] eKLR and stated that the state should prove its case so strongly that the evidence leaves the trial court with the highest degree of certitude based on such evidence beyond

reasonable doubt and material evidence to dissuade the trial court from acquitting an accused person.

27. At the conclusion of the case and in considering the material before the court I note that, the offence the accused is charged with is provided for under section 203 of the Penal Code which states as follows:

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder”

28. Pursuant thereto, the ingredients of the offence are settled by various court’s decision as follows; a) proof of the death of the deceased, b) that the death was caused by an unlawful act or omission of the accused, and c) that the act was committed with intent to kill or cause grievous harm, basically malice aforethought.

29. The court of appeal decisions in the case of; *Roba Galma Wario v Republic (2015) eKLR* reiterate these

elements, emphasizing that proving these ingredients beyond reasonable doubt is crucial for conviction, with malice aforethought distinguishing murder from manslaughter.

30. In the instant matter there is no dispute as to the occurrence of deceased's death based on the evidence of inter alia; PW1, PW2, PW4 and PW5 who confirmed that, the death occurred. In fact, the defence is not disputing the same.

31. As regard the cause of death, it was established by Dr. Joseph Ndungu who conducted the post mortem on the body of the deceased, and produced the post mortem report in evidence. He stated that, on external appearance, he noted a single gunshot wound, an entry wound on the right nasal bridge ring about 1cm in diameter. That, there was an exit wound in the right region measuring about 1cm in diameter.

32. Further, on opening up the body, he noticed an entry and exit gunshot wound on the head with wound skull fractures around the entry and exit. Furthermore, there was brain laceration in the track of the bullet. The doctor formed the opinion that, the cause of death was head injury secondary to single gunshot on the head.

33. The third issue to determine is whether, the accused caused the death of the deceased. Pursuant to the evidence adduced, it is not in dispute that, on the fateful night (PW1) C.I. Gilbert Mabunga led a team of officers including the accused on patrol duties within Mukuru Kwa Njenga to North Airport road.

34. It is not in dispute that; the accused was with a Jericho pistol serial No. 44338859 which was loaded with 15 rounds of ammunitions. (PW7) No. 235253 Inspector Reuben Bett a forensic firearm expert confirmed in evidence that, he examined the

subject pistol and established that, it is capable of firing. That, at the time of examining the pistol had 13 rounds of ammunition although its capacity is 15 rounds of ammunition.

35. Further evidence adduced by both parties reveal that when the accused returned the firearm it had 13 rounds of ammunition, yet he had been given, 15 rounds of ammunition. It therefore follows that he fired at least 2 bullets or rounds of ammunition.

36. PW9 No. 615201 Sergeant John Kinoti who testified on behalf of PC Kiprono confirmed that, the accused was issued with the Jericho pistol and 15 rounds of ammunition and when he returned it, two bullets were missing. That according to the explanation recorded in the OB, the two bullets herein were fired in a shooting incident. The firearm movement register was produced in evidence

37. At this point, the question to address is whether, the bullet that was fired from the pistol in

possession of the accused, is the one that caused the deceased's death. To answer this question, the court notes from the evidence of (PW1) C.I. Mabunga as he was going to assist the accused who had been confronted by two people he heard a gunshot and found a male adult on the ground where the accused was standing. That by the side of the man was a homemade gun

38.PW2 No. 100454 PC Kevin Okoth Orwa also testified that, as he returned to where his colleagues as after losing the people he was following, he saw someone struggling with the accused and before he got where they were, he heard a gunshot and when he got to the scene, a person was lying down and beside him, there was a homemade gun with two bullets. That he assumed the person was dead. That, the accused was next to the body and when he asked the accused what had

happened he learnt that, the accused had shot the deceased.

39.PW3 No. 100432 PC Peter Mwangi Nyaga testified that, while in the police vehicle guarding prisoners, he heard a gunshot from the direction his colleagues had gone. However, he did not attend to the gunshot. He further testified that he was issued with an AK 47 rifle on the material date.

40.PW4 No. 73323 Corporal driver Peter Wanjohi Wachira led evidence similar to that led by the PW3 PC Nyagah. He too stated that, while in the police vehicle, he heard a gunshot behind makeshift structures. That he alighted from the vehicle and went to check and found a man lying on the ground. That he had been shot by PC Okoth, the accused herein.

41.Finally, the accused testified that he shot the deceased in self defence. That he heard a gunshot and dashed to a corner to secure himself, and when

he was confronted by two people, he retrieved his firearm and fired towards the hand of the attacker as the attacker advanced towards him and the bullet got the deceased on the head. That he fired one gunshot and he fell down.

42. Based on the afore evidence of the witnesses and the accused's own evidence that, there is no doubt that the deceased met his death as a result of a gunshot from the accused's pistol.

43. The next question is whether the accused had justifiable reasons to shot the deceased fatally. In this regard, the following facts unfold that, prior to the incident, there were members of the public who complained to the officers on patrol that they were being mugged. That the police officers they saw a group of 6 to 7 people and when PW1 C.I Mabanga challenged them to identify themselves, he heard a gunshot and when those people realized that they

were police officers, they ran into different directions.

44. Yet PW1 C.I Mabanga testified that, he saw the two men; big bodied person and the other was medium size pulling the accused down and it took two (2) minutes between the scuffle and gunshot. PW2 PC Orwa also testified that, saw someone struggling with the accused and before he got where they were he heard gunshot and saw the deceased on the ground. PC Kiplangat PW6 stated that, he saw two people go the accused was and grabbed him. That the accused was behind the stall but ahead of him. That he saw those people wrestle the accused on the ground and then heard a gunshot and one of the two civilian ran away.

45. Pursuant to the evidence of PW1, PW2 and PW6 it is clear that, the people whom PW1 C.I. Mabunga ordered to stop dispersed in different directions, and each officer pursued them in different

directions. The accused does not state in his evidence that he pursued any of them and they overwhelmed him. What comes out is that his colleagues were attracted to a confrontation between him and two people.

46. The question is how did the accused come in contact with these people and are they among those who were mugging members of the public? That leads me to the evidence of PW10 and PW11.

47. PW10 Lucy Kagendo testified that, the deceased was her husband. That, they were on a footpath between the "vibanda" stalls in the company of their friends PW11 Judith Muhonga and her husband Oscar, when all over sudden a man emerged on her left side. That he was wearing civilian black clothes and marvin and slapped her husband on the head.

48. That her husband got shocked and turned and the man went down as though he had slipped and when he got up, he removed a gun and shot her husband

and he started bleeding, and she (PW10) Lucy went into “black out” and disappeared into the stalls.

49. That at that time her husband was still alive and though they pleaded to be allowed to take him to hospital, the police officers refused and chased them away. That, finally, they traced the deceased’s body at the city mortuary.

50. In cross-examination, she stated that they were from a party and were walking along the road and that Oscar and Judy were going to collect their children. That, the deceased was employed as a security guard at Pypirus (K) Ltd. That, the deceased was killed at St Bakhita and not Mukuru Kwa Njenga as reported.

51. That, there was a police vehicle, a land cruiser, and they passed by it without any problem. Further, that she was walking beside the deceased and that, the accused was alone and dressed in civilian clothes with a marvin on the head. That she could identify

him as there were lights on the road. She maintained that it is the accused who slapped the deceased and during the incident Oscar was chased away.

52.PW11 Judith Muhonja gave similar evidence as led by PW10. That, while on the road, in the company of her husband Oscar, Lucy PW10 and her husband; the deceased going to collect her children, they found many police officers on the road, dressed in jungle uniform. That there was a police vehicle and they were walking beside “vibanda”.

53.That, the deceased was walking ahead followed by Oscar. That, as they walked on someone emerged and slapped the deceased from the back. That the deceased was big and huge and as he turned the person fell in front of her. That when the deceased asked him why he was slapping him, before he could answer, she told the deceased that he was a police officer.

54. That at that point she knelt and said “Afande sisi hatuna shida” and as she was talking, she heard a gunshot while still on her knees and saw the deceased had fallen down. That she crawled to the deceased and told the deceased to sleep on his side as he was bleeding and groaning in pain.

55. That, she asked the officer why he shot the deceased, and at that point, the deceased’s wife PW10 got shocked, lost consciousness and fell into a ditch as Oscar ran away. That the accused just stood there as other officers came by.

56. That she got PW10 Lucy from the ditch and went to plead with the police officer to allow them take the victim to hospital and they declined but eventually agreed. However, as they were waiting for the vehicle, the female officer told them a police vehicle was on the way, but still chased them away and when the two (PW10 and 11) returned, they did not

find the victim and were told to go and report the matter at Embakasi Police Station.

57. That when they got to the police station, they found the accused there and were chased away and told the victim had been taken to Kenyatta National Hospital, but they did not trace him there but at the city mortuary.

58. In cross-examination PW11 Lucy denied that, there was fracas and that any one was running around. She maintained that, the accused stopped the deceased without any reason and did not ask the deceased any question. That the accused tripped and fell when the deceased turned and that as the officer fell the deceased asked "Ni nini unanipiga" and she told the deceased, the accused was a police officer.

59. That the deceased and Oscar were not armed. Further the deceased did not have a weapon, and if he had a gun she could have seen it. Furthermore,

the deceased did not attack the accused. That the deceased was wearing a T-shirt and three quarter shirt and did not have a jacket and no one searched the deceased.

60.PW11 stated that she was the only one who kept checking on the deceased to establish if he was still alive. She vehemently denied that their husbands left the house first and they followed them. That, as they walked along it was the deceased who was talking telling to them telling them there was enough security. In re-examination she maintained that, no pistol was recovered from the deceased. That she never heard of a recovered toy pistol.

61.Based on the evidence of PW10 and PW11 several question arise:

a) Was the deceased among the muggers who attached the members of the public or an innocent member of the public, who was a victim of circumstances?

b) Were PW10 and PW11 at the scene of the incident? Did they witness the incident? If so, did it occur as they have narrated?

c) Was the deceased armed and more so, with the alleged homemade gun with 2 rounds of ammunition?

d) Did the deceased attack the accused as alleged?

62. In addressing the afore question, I find that the first question to answer is (b) above. Notably there is a lot of similarities between the evidence of the evidence of PW10 and PW11 and

63. First and foremost, all of them state that the incident took place at St Bakhita area. Secondly, all testified that it was at a place there were “vibanda” and/or structures described as “stalls”. All witnesses refer to a police vehicle near the scene, a fact confirmed PW3 and PW4 that, they were in the police vehicle driven by PW4 Corporal Wachira.

64. Furthermore, PW10 and PW11 stated that when they met the accused, he was alone. PW1, PW4 and PW6 all stated that when they responded to the incident the accused was alone struggling with two people. Further, all witnesses confirmed the officers in the police vehicle wore police uniform, while the accused wore civilian clothes. Furthermore, all the witnesses were in concurrence that there were very many people on the road as it was Christmas day.

65. Pursuant the afore evidence it is the finding of this court that when the shooting incident occurred, PW10 and PW11 were at the scene. Yet, all the police officers, who testified from PW1, PW2, PW3, PW4, PW6 did not testify to the presence of these witnesses (PW10 and PW11). The failure to reveal the presence of PW10 and PW11 can only be attributed to the fact that, the police officers who

testified were shielding one of their own. Indeed, their evidence must be treated with a lot of caution.

66. Then the issue that arose is of the homemade gun.

The evidence of PW1 C.I Mabonga is that he found it beside the deceased. He conceded that he did see the deceased with it before he was shot and so did all the other police officers, PW2, PW3; PW4 and PW6 who testified. They seem to have just found it beside the deceased.

67. The evidence reveals that it was taken away by the officers from Embakasi police station who went to the scene. PW12 Shaviya Mameti from IPOA stated the first report of the incident was made at Mukuru Kwa Njenga police post but there is no mention of the homemade gun.

68. That, a further report of the incident was made at Embakasi police station the same day and reflected recovery of the homemade gun. However, PW12 Shaviya Mameti stated that although he requested

for it he was not given the same. In cross-examination he said that, there was no ballistic report on the homemade gun or the two (2) rounds of ammunition. Notably the homemade gun was not produced in court.

69. The question is where did the homemade gun come from and where did it go to. Yet PW8, Snr Sgt Lihanda who processed the scene testified that, he took photos of the scene showing a homemade pistol. In the considered opinion of the court based on the evidence of the witnesses of the prosecution and the defence, it is only the accused who can tell where the gun came from as he did not at any time testify that the deceased was armed with it or aimed it at him. Yet PW10 and PW11 were vehement that the deceased did not have the gun. I had the benefit of their demeanour and even noted it was firm and their evidence as to what happened convincing and unshakeable.

70. Be that as it were, before I revert to the question as to whether the accused kill the deceased, I shall address several issues raised in the defence final submissions that; there is insufficient evidence to support the charge, that, the accused was acting in self defence, defence of the general public and the property of the members of the public from a possibility of being robbed, that, the prosecution did not produce the homemade gun. Further the accused was struggling with two (2) men on the ground when the incident occurred.

71. Most of the issues are already addressed and the main issue is whether the accused acted in self defence. The defence of self-defence is provided for under section 17 of the Penal Code which provides, inter alia as follows:

“Subject to any express provisions in this Code or any other law in operation in Kenya, criminal responsibility for the use of force in the defence of person or property shall be determined

according to the principles of English Common Law.”

72. The afore said common law principles were spelt out in the case of; Palmer vs. Republic ([1971] A.C. 814 in which the court stated that:

“It is both good law and good sense that a man who is attacked may defend himself. It is both good law and common sense that he may do, but only do, what is reasonably necessary. But everything will depend upon particular facts and circumstances. Some attacks may be serious and dangerous; others may not be. If then is some relatively minor attack, it would not be common sense to permit some act of retaliation which was wholly out of proportion to the necessities of the situation. If an attack is serious so that it puts someone in immediate peril, then in a mediate defensive action may be necessary. If the moment is out of crisis for

someone in immediate danger, he may have to avert the danger by some instant reaction. If the attack is over and no sort of peril remains, then the employment of force may be way of revenge or punishment or by way of paying off an old score or may be pure aggression. That may be no longer any link with a necessity of disproved, in which case as a defence it is rejected. In a homicide case this circumstances may be such that it will become an issue as to whether there was provocation so that the verdict might be out of manslaughter. Any other possible issues will remain. If in any case the view is possible that the intent necessary to constitute the crime of murder was lacking, then the matter would be left to the jury."

73. Notably, from the afore provision and court decisions, self-defence in criminal law allows the use of force to protect oneself or others from an

unlawful attack. This defence is generally applicable when the force used is deemed reasonable and necessary to repel the attack. The key elements include; an imminent threat, a reasonable belief in the need for force, and a proportionate response to the perceived threat. It suffices to note that it is an affirmative defense, meaning the defendant bears the burden of proof to demonstrate these elements.

74. The question is: Is the defence of self-defence applicable herein? The events in this matter are not too hard to reconstruct. The accused and others were on normal duty and armed for that purpose. It is in evidence that there were complaints of attacks on members of the public and indeed some six or seven men described as youth were held as suspects.

75. That confronted, the suspects fired at the officers and took off. None were arrested by all other

officers in the company of the accused. There is evidence the deceased was in the company of PW10 and PW11 walking lawfully from a party. I find no reason to disbelieve PW10 and PW11.

76. The evidence reveals the accused just emerged and landed a slap on the deceased. And of course, the deceased like any other man will not take a slap lying down. He is said and evident from photos taken at the scene to have been a security officer well-built and that he turned to inquire from the accused why he had slapped him and the accused tripped and fell down. That explains why PW1, PW2, PW6 states that they saw him come up from the ground, thus corroborating the evidence of PW10 and PW11.

77. It is also in the evidence of PW1, PW10 and PW11 that it took a fraction of a minutes or two minutes, as stated by PW1 between the time the accused

tripped down and woke up to shoot the deceased and shot the deceased. What danger was he facing?

78. Notably, in cross-examination of C.I Mabonga PW1 he stated that, he could not see whether the man who attacked the accused was armed. Further, Corporal Wachira (PW4) testified that, he did not see any physical injury on the accused.

79. Further the mugging suspects were described as youth. I have looked at the photo of the deceased taken by scene of crime personnel and it is clear that he was not a youth. The post mortem report gave his age as forty-three (43) years, certainly not youth and it is unlikely he was among the 6-7 people who were mugging the members of the public. That then gives credence to the evidence of PW10 and PW11 as to the events of the day.

80. Moreover, the evidence of PW10 and PW11 and as seen in the photos taken at the scene, the deceased was wearing a T-shirt and trouser, no jacket. Does a

criminal walk around with homemade guns loaded with rounds of ammunition exposed?

81. Further, it is not in dispute that there were two men who were with the accused when he fired the bullet. Obviously it was the deceased and his friend Oscar, although the defence argue that Oscar also attacked the accused, none of the prosecution witnesses supported that evidence. Furthermore, I find that the evidence of Oscar was critical to corroborate that of; PW10 and PW11 but its absence does not prejudice the prosecution case in the light of the evidence of PW10 and PW11.

82. Moreover, the defence of self defence shifts the burden of proof to the accused. From the afore evidence, it is clear that the deceased was not armed and in that case the accused was not under any eminent danger that called for use of his gun in self defence. But even if he was, he had no physical injury on his body. There is no evidence that, the

deceased aimed a gun of whatever kind at him. As such his defence of self defence fall by the way. He has admitted he shot the deceased.

83. The last question is; did the accused have malice forethought. Section 206 of the Penal Code (Cap 63) Laws of Kenya defines "malice aforethought" as the essential mental element for murder, established by proving an intention to kill or cause grievous harm, knowledge that an act will likely cause death, or intent to commit a felony.

84. In the instant matter, the incident took place during the Christmas cum festive season when there many members of public on the road and therefore need to be cautious. The accused is a police officer was armed to protect these people. Yet the accused landed on a member of the public, slapping him for no apparent reason, without giving him an opportunity to explain himself. It cannot be said he acted prudently.

85. However, there is no evidence that, the accused had prior engagement with the deceased and/or any intention or motive to kill him. In my considered opinion, the accused behaved in a reckless manner. In that case, I am inclined to give him the benefit of doubt and reduce the charge from that of murder to a charge of manslaughter and convict him accordingly.

86. It is so ordered.

Dated, delivered and signed on this 3rd day of March 2026.

GRACE L. NZIOKA
JUDGE

In the presence of: -

Ms Kigira for the state

Mr. Ario for the accused

Accused- present physically

Ms Hannah court assistant