



**Republic v Mutune alias Kivuva Kyalo (Criminal Case E006 of 2025)  
[2026] KEHC 2609 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2609 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E006 OF 2025  
JN ONYIEGO, J  
FEBRUARY 26, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SAMUEL MUTUNDU MUTUNE ALIAS SAMUEL KIVUVA KYALO ALIAS  
SAMMY ..... ACCUSED**

**JUDGMENT**

1. The accused person herein 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 11.03.2025, at Korakora area in Garissa Central Sub – County within Garissa County, he murdered John Mutinda Kimanzi. Upon arraignment in court, he pleaded not guilty and a plea of not guilty was entered.
2. The matter proceeded to full trial during which time the prosecution adduced evidence through nine witnesses in support of its case and thereafter the prosecution closed its case.
3. Briefly, PW1, Gladys Kaari stated that the deceased was her husband and that they lived at Korakora where they grew fruits. She stated that her husband had been farming on the land given to him by one Ebla. On the night of 10.03.2025, at about 10:00 p.m., Sammy (accused), a fellow farmer, went to their house and asked her husband for his solar lamp. Her husband told him to return during the day, but Sammy insisted, saying he had already sold it to someone. Eventually, her husband gave him the lamp and also asked him to return some items he had left with him earlier. Sammy later took back most of the items but claimed that one jembe was lost, offering to pay 300 shillings instead. Her husband agreed, and arrangements were made with Nicholas to send 200 shillings to add to the amount.
4. She recounted that Sammy had borrowed a sprayer pump from her husband, which was later found faulty. The next morning, her husband went to Sammy's house to help repair it. While she was making



- tea, she saw her husband and Sammy engage in a scuffle. Amos joined in, and together they tried to separate the two.
5. During the struggle, the said solar lamp was damaged. Later, her husband went to Nicholas to ask about the money. That they all urged Sammy and Mutinda to make peace. Afterwards, her husband carried flour to Sammy's house to refund what they had borrowed. She said that while outside, she saw her husband with Sammy and two Somali men near Sammy's house. Suddenly, the Somali men ran away, and Sammy went to her while holding a blood-stained panga. That Sammy told her that he had fought with Mutinda and showed her where her husband lay dead, bleeding, with his phone near him.
  6. She stated that she screamed when Sammy ordered her to keep quiet and chased her. That she met Katura, her husband's friend and informed him of what had happened. Together with Joginder and the chief, they returned to the scene where police later arrived and took the body to the mortuary. A post-mortem was conducted in Garissa referral hospital which she attended with her mother. The body was later released and buried on 21.03.2025. She added that Sammy fled but was later arrested on 17.05.2025 after boda boda riders chased him down when she spotted him at Adele. He was later taken to Madogo police station where he was re-arrested and locked in. She concluded by identifying Sammy in court as the man she had known for three months before he killed her husband.
  7. On cross examination, she stated that Sammy had quarrelled with her husband over several items. She explained that when she saw Somali men running away, Sammy approached her. At that time, there were four people present: Sammy, Mutinda and two Somali men. She recalled that Sammy was wearing a blue T-shirt and green shorts and was armed with a panga. She emphasized that Sammy did not attack her but threatened her. She added that she did not actually see or hear the act of killing her husband, though she heard some noise during the incident.
  8. She further stated that she did not witness Sammy killing her husband. She explained that Sammy was later arrested by boda boda riders, who pursued him first on motorcycles and then on foot until he surrendered. She confirmed that she and the landlady, Ebla, reported the matter to the authorities.
  9. PW2, Somane Sugow Arale stated that he was a herdsman and also a farmer. It was his testimony that he had known Mutinda for 4 years, as he (Mutinda) used to work at Ebla's farm during that period. He added that he had known Sammy for about two months before the incident. He explained that he also used to work in a shamba near to Ebla's farm and identified Sammy in the dock as the accused.
  10. He recalled that on 11.02.2025, he had taken his livestock for grazing. That he asked Mutinda to look after them on one piece of land while he went to check elsewhere. He said that Sammy called him and they resolved a shamba dispute. At that moment, he saw Mutinda approaching, carrying two packets of flour. He testified that Sammy suddenly jumped over Mutinda and he saw Mutinda fall down with blood flowing from his neck. He stated that Sammy had cut Mutinda with a panga. Out of fear, he ran away, but Sammy chased him while carrying the blood-stained panga. He said people later took him (Mutinda) home as the police came and took his body away.
  11. He confirmed that it was Sammy who had run after him and that he was afraid. He later recorded a statement with the police and identified Sammy during an identification parade.
  12. On cross-examination, he stated that at the time of the incident he was staying with Mutinda and Sammy. He confirmed that he saw Sammy cut Mutinda at around 12:00 noon while he was herding his livestock. He explained that only three people were present: himself, Mutinda, and Sammy. He described Sammy as having a long white panga and that he saw him jump at Mutinda. He added that when he ran away, he was so shocked that he remained disturbed for three days.



13. He further stated that he knew Gladys, who was Mutinda's wife and that he had known Mutinda for about 2 months. He confirmed that he attended the identification parade and was able to identify Sammy.
14. PW3, Ebla Dakane Hassan, testified that she was attached at Bura Kengen in Garissa and was a farmer at Korakora. She said that she had known John Kimanzi Mutinda, who had worked for her for four years, and she also knew Sammy, who had worked on her farm for six months in 2025. She explained that she eventually dismissed Sammy because he interfered with the farm's solar system and engaged in charcoal burning, which caused her four acres of bananas to almost dry up due to lack of water from interrupted power supply. After dismissal, Sammy continued working on a nearby farm.
15. She recalled that on 09.03.2025, she visited her farm to carry out irrigation piping and found Mutinda and his wife working there. She gave them flour and planned to return the following day. On 10th March, she spoke with them on phone. On 11th March, she received several calls and messages informing her of Mutinda's death. She contacted the OCS at Garissa police station and called people at the farm, where she was told that Mutinda had died and Sammy had fled.
16. She then called her brother-in-law, who visited the scene and later, she went there and took Mutinda's body to the mortuary. She confirmed that she could see Sammy in court and added that before Mutinda's death, Sammy and Mutinda had been friends.
17. On cross-examination, she stated that he knew Sammy but did not know Gladys before the incident. She said that she did not personally know who had killed Mutinda but she was informed that it was Sammy. She added that she took photographs at the scene and handed them over. She confirmed that the deceased was wearing a black trouser at the time.
18. PW4, Cyrus Joginder stated that he knew Samuel Mutinda Mutune as his friend. He stated that they had burned charcoal together and that Mutinda had received him when he first visited Korakora. He added that he also knew the deceased as they were neighbours and married to sisters—he himself being married to the elder sister of the deceased's wife.
19. He recalled that on 11.03.2023, he received a call from PW1 informing him that Mutinda had died and that Sammy, the accused, had killed him. Joginder said he gathered five to seven people and proceeded to the scene which was about two kilometres away. On arrival, they found Mutinda's body lying on the ground with a cut on the right side of the head and the right ear severed.
20. He stated that he called Mutinda's employer, Ebla and informed her of the death. He added that they did not find anyone at the scene at that time which was around 9:00 a.m. That Police later arrived and took the body away. That they also contacted Mutinda's mother who responded and together agreed to take the body to the hospital. He later learnt that Sammy had disappeared from the village.
21. On cross-examination, he confirmed that he did not see the accused kill Mutinda and that when he arrived, Mutinda was already dead. He stated that he had received the call from PW1, who had also been called by Katuma
22. PW5, Dr. Fred Naibei stated that on 20.03.2025, he performed a post-mortem examination on the body of John Mutinda Kimanzi. He testified that externally, he observed that the deceased had around three injuries. He noted blood stains on the head, face and eyes. On the neck, there was a deep cut measuring 11 cm by 4 cm by 5 cm, which involved the cervical bones and severed backbone. That there was also blood haematoma and both hands were stained with blood.
23. On internal examination, he found that the heart had lost blood and the cervical spine had injuries corresponding to the cut area. The backbone was severed with its contents exposed. He concluded that



- the cause of death was excessive bleeding resulting from the deep cut to the neck. He signed the post-mortem report and produced it as an exhibit (P. Exhibit 1).
24. On cross-examination, he testified that he did not know the exact time the body had been brought to the hospital but that he carried out the examination at 10:00 a.m. He noted that the body had been received on 09.03.2025 but examined on 20.03.2025 and that it had been properly stored.
  25. PW6, CIP Urbanus Kioko explained that on 27.05.2025 at around midday, while at the DCIO's office in Garissa, an officer, Alex Nyamu, who was investigating a murder case approached him. Nyamu had arrested a suspect named Samuel Mutune and requested that he conduct an identification parade.
  26. Kioko told the court that he conducted an identification parade in respect of the accused in which one Somane identified the accused. Kioko stated that after the exercise, the suspect raised no complaint and signed the parade form, which he produced as an Exhibit (P. Exhibit 3).
  27. On cross-examination, he stated that he did not know whether Somane had been unable to identify the accused. He insisted that Somane had indicated that he could identify the suspect. He added that the accused was in a stable condition during the parade, though he had claimed that he had been attacked during arrest. Kioko explained that the accused never complained and that he did not record his condition in the parade forms as it was not mandatory.
  28. PW7, No. 60903 Cpl. Kithae Mutunga stated that he was attached to the DCI Scenes of Crime and that on 11.03.2025 at 16:30 hours, he was at Isaack's farm in Korakora area within Iftin, Garissa, together with Cpl. Nyamu and other officers. That Cpl. Nyamu, being the investigating officer, requested him to photograph the scene of a murder incident.
  29. Following that request, he took several photographs showing various views of the deceased's body lying on a pool of blood while sustaining a deep cut on the rear head. On cross-examination, Cpl. Mutunga confirmed that he was the one who took the photographs at the request of Cpl. Nyamu. He said that a machete was lying at the scene. He added that the photographs were taken on 4.03.2025 using a Nikon camera, though he did not indicate the name of the camera in the certificate.
  30. PW8, Nicholas Mutua Muli stated that he was a farmer from Korakora. He said that he knew John Mutinda, now deceased and Sammy whom he identified in court as the accused. He recalled that on 11.03.2025 at about 8:00 a.m., he was irrigating his shamba, which was located between Mutinda's farm and Sammy's farm. At that time, he heard Gladys Kaari (PW1) talking loudly. He also heard Sammy shouting in a shocked manner. He explained that Kaari, who had been living with Mutinda for about three weeks was present at Mutinda's farm which was part of Ebla's land.
  31. Nicholas said he went to Mutinda's farm and saw Kaari, Mutinda and Sammy together in Sammy's farm. He observed Mutinda holding a hurricane lamp. He heard Sammy saying that he had previously lived with Mutinda on another farm and that Mutinda had left him with items including a fork jembe, a chapati pan and a tent. Sammy also said that it was Mutinda who had introduced him to that farm. Nicholas testified that Sammy was ready to spray the farm but the two men were quarrelling over a solar panel that Sammy had given Mutinda. Sammy demanded the return of his solar while Mutinda demanded back his jembe and spray pump. Nicholas said that he advised Mutinda to go home and wait for Somane, who would call their bosses, and they all left.
  32. Later, at about 4:00 p.m., he saw Mutinda return with a solar panel. He said he was at his farm with his workmate, Karuma when Karuma told him that Sammy had killed Mutinda. Karuma explained that he had been informed by Kaari and that Somane was at the scene and had called Ebla. Nicholas said he did not go to the scene himself but confirmed that Sammy was in the dock and even had a mark on his stomach.



33. On cross-examination, Nicholas confirmed that he did not see Sammy with a panga and did not witness Sammy kill Mutinda, but was only told about it by Karuma. He added that Mutinda was often emotional and could fight at any time.
34. PW9, No. 83191 Cpl. Alexander Nyamu recalled that in March 2025, at around 16:06 hours, he was informed by his superior, the Garissa Sub-County Commander regarding a murder case. Together with colleagues, he proceeded to Isaack's farm where they found the body of one Samuel Mutinda.
35. He stated that the crime scene was processed by investigators and witnesses interrogated. The body was later moved to Garissa mortuary as one Somane, reported that he had seen the accused attack the deceased with a panga on the neck after the deceased arrived at the scene carrying two packets of unga. He reiterated the testimony of witnesses and later charged the accused.
36. On cross-examination, Nyamu confirmed that the accused had been mentioned by Somane. He said the incident was reported on 11.03. 2025 at 11:30 a.m., and it took them 2–3 hours to reach the scene. At the scene, they found a panga and the body which was documented by the Scenes of Crime officers. He admitted that he was told what had happened and relied on witness accounts. He said the identification parade was conducted to clear doubt though they had initially questioned whether Somane had been present during the incident. He stated that Somane knew the accused well before the incident, and he took Somane's evidence as true. He confirmed that the panga was before court but did not know when the body was taken to the mortuary.
37. On re-examination, he reiterated that he had taken Somane's statement and trusted his evidence. He added that he was not present when the body was transported to the mortuary.
38. DW1, Sammy Mutundu denied that he had caused the death of the deceased. He stated that on the material day, the deceased visited the farm where he worked at around 5:00 p.m. and woke him up, saying that he would bring his panga and shoes before leaving. That later, Mutinda called his wife to his farm while he was watering watermelons. She told him that he was clever but warned him not to harvest the melons.
39. According to the accused, the deceased returned and, noticing that he had his spray pump, he accused him of spoiling it. That as the deceased demanded for the repair of his spray pump, he became violent. Sammy stated that the deceased picked up a piece of the broken metal pump and attempted to strike him, but at that moment PW1 and another person arrived. The deceased then grabbed a solar lamp by force, prompting him to cover his face with a jacket. The deceased left with the lamp, threatening to kill him. He then followed him briefly to the shamba, but when the deceased repeated his threat, he returned to his farm. Later, he saw the deceased in the company of Nicholas.
40. Sammy recounted that when he went to chase away monkeys, he saw the deceased lying on the ground. He informed PW1, who began searching the deceased's pockets. He then noticed that the deceased had blood all over his body. He admitted that he feared he would be jailed for killing the deceased, so he went back to manage his farm. Later, when he went to buy food, he was arrested.
41. After the closure of the defence case, parties were directed to file their submissions. The accused person via his undated submissions filed by the firm of Owino urged that the prosecution did not prove its case to the required standard. That the evidence by the prosecution was not only contradictory but also inconsistent. It was urged that the evidence regarding the time of the incident was equally contradictory in that PW2 who alleged that he saw the incident claimed that the same happened at 1200 noon while other witnesses stated that the incident happened at 9.00 am.



42. Additionally, it was pointed that the investigating officer also stated that the matter was reported at 1130 a.m. and that it took him two to three hours to reach the scene of crime. That he contradicted himself that he received the information at 1600hrs from his boss to act on the matter.
43. Additionally, counsel submitted that the alleged weapon used in the commission of the offence was not produced. That no forensic evidence was produced before the court to link the accused person to the offence. On the conduct of the id parade, counsel contended that the parade was not necessary as the witness knew the accused before. Counsel relied on the case of Samuel Kilonzo Musau vs Republic (2014)e KLR where the court held that where a witness already knows the accuse it is not necessary to conduct an ID parade.
44. On the question of corroboration, counsel contended that there was no corroboration of the evidence of pw1 being the sole witness who allegedly saw the accused cut he deceased. Reliance was placed in the case of Abdalla Bin Wendo & another vs Republic (1953)EACA where the court held that a court can only convict based on the evidence of a single witness after cautioning itself on the dangers of relying on such evidence a lone.
45. Unfortunately, prosecution did not file their final submissions.

### **Analysis and determination.**

46. I have considered the charge herein, the evidence adduced by both the prosecution and the defence as well as the submissions on record tendered by the defence.
47. The broad issue for determination is whether the prosecution has proved the charge against the accused person to the legal threshold set in law.
48. Section 203 of the Penal Code defines murder as follows:

“ Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.”
49. Thus, the central ingredients of the offence of murder are: whether death occurred; whether the deceased’s death was caused by an unlawful act or omission; whether the accused committed the unlawful act which caused the death of the deceased and; whether the accused had malice aforethought. See Republic v Duncan Munene [2021] KEHC 1345 (KLR)
50. Concerning the question whether death occurred, PW5, Dr. Fred Naibei testified that he performed a post-mortem examination on the body of John Mutinda Kimanzi. From his opinion, he concluded that the cause of death was excessive bleeding resulting from the deep cut to the neck. He signed the post-mortem report as an exhibit (P. Exhibit 1). Besides all prosecution witnesses plus the accused confirmed that the deceased died on the material day.
51. The next question is whether the deceased’s death was caused by an unlawful act or omission.
52. As indicated above, the deceased did not die a natural death. The nature of injuries sustained rules out an accident and defies any other explanation other than the act of a human hand. The deep cut to the neck is a clear demonstration of the fact that the act was an unlawful act.
53. Having held that the occurrence of death and unlawful cause of it has been established, the critical question is, who caused it.
54. The accused person herein has been charged with the offence of causing the death of the deceased unlawfully. Connecting him directly to this offence is the evidence of PW2 who testified as an eye



witness. The witness stated that he saw Mutinda fall down with blood flowing from his neck as Sammy had cut him. That out of fear, he ran away.

55. In essence, this case turns on the evidence of PW2 with the emerging issue being the identification of the accused person as the perpetrator of the heinous act herein. Notably, on record is the evidence of a single identifying witness.

56. In the case of Faith Muthoni M'ngondu & 3 others vs Republic [2018] eKLR, the Court of Appeal addressing itself to the principles applicable where identification of a perpetrator is disputed stated;

“The guiding principles that the learned Judges took into consideration when addressing the appellants’ challenges to their identification/recognition at the scene of the robbery are the same principles we are enjoined to apply in determining the same issue as now placed before us. These have now been crystallized in a long line of cases. See Cleophas Otieno Wamunga versus Republic [1989] KLR; Paul Etole & Another versus Republic [2001] eKLR; and Francis Kariuki Njuru & 7 Others versus Republic Criminal Appeal No. 6 of 2000 (UR). They may be summarized as follows:(i)Evidence of visual identification in criminal cases can bring about miscarriage of justice. It is for this reason that a court is enjoined to examine such evidence carefully to minimize such danger.(ii)Whenever the case against the defendant depends wholly or to a great extent on the correctness of one or more identification of the accused which he alleges to be mistaken, the court must warn itself of the special need for caution before convicting the defendant in reliance on the correctness of such identification/recognition.(iii)The court has an obligation to examine closely, the circumstances in which the identification by each witness come to be made.(iv)The court also had a duty to remind itself of any specific weaknesses which may have appeared in such identification evidence.(v)It is true that recognition may be more reliable than identification of a stranger, but even when the witness is purporting to recognize someone whom he knew, the court should remind itself that mistakes in recognition of close relatives and friends are sometimes made.(vi)Evidence relating to identification has to be scrutinized carefully and should only be accepted upon if the court is satisfied that the identification was positive and free from any possibility of error.(vii)Among the factors surrounding evidence of identification/recognition that a court is required to inquire into is whether the witnesses gave either the description or the names of the attackers to either the police or persons who come to the scene of the attack soon after the attack and at the earliest opportunity”.

57. In the case of Wamunga vs Republic (1989) KLR 426 cited by the Court of Appeal above, the court had put it plainly thus;

“It is trite law that where the only evidence against a defendant is evidence of identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of conviction”

58. It is trite law that uncorroborated testimony of a single identifying witness can be sufficient to support a conviction, but a court should approach such evidence with caution, thoroughly testing the reliability of the identification due to the fallibility of human observation. [Also see the case of Maitanyi vs Republic [1986] KLR 198].

59. In the instant case, PW2 stated that at the time of the incident he was staying with Mutinda and Sammy. He confirmed that he saw Sammy cut Mutinda at around 12:00 noon while he was herding his livestock. According to him, only three people to wit, Mutinda, himself and Sammy were present.



He described that the said act shocked and disturbed him hence the reason why he ran. Additionally, he stated that he attended the identification parade and was able to identify Sammy. In my view, noting that the offence herein was perpetrated during full day light and further, noting that PW2 previously had known Sammy for about two months before the incident as he used to work in a nearby shamba to Ebla's farm, it was not necessary to conduct an id parade. From the foregoing, it was not to be denied that identification was by way of recognition.

60. After assessing the general demeanour of pw2, he struck me as a honesty, reliable and creditworthy witness. I therefore caution myself that no prejudice nor miscarriage of justice nor danger would be occasioned by relying on his evidence alone to convict. See also Abdalla Bi Wendo( supra).
61. However, the testimony of pw1 wife of to the deceased can circumstantially support the evidence of pw2. She gave a history of how her husband and the accused had prior to the death of her husband had engaged in a bitter quarrel over various items they owed each other. That during the fateful hour, her husband took Sammy some flour as a refund to some he had borrowed from him(accused).
62. That when her husband took long to return she got outside her house and managed to see her husband, the accused and two somali guys among them Somane(pw2) running away. That suddenly, he saw the accused running towards her demanding for his solar lamp. That the accused who was carrying a blood stained panga told her that he had fought with her husband and asked her to go and look for him. That when she went to the scene, she found her husband's lifeless body lying in a pool of blood. That the accused fled the scene until the day he was arrested.
63. From the evidence of pw1 and the conduct of the accused when he disclosed while he was holding a blood stained panga to pw1 that he had fought with the deceased it is circumstantially implicating the accused with the death of the deceased. Why would the accused be carrying a blood stained panga while reporting to pw1 that he had fought with her husband and immediately the dead body of the deceased is found within the same vicinity? This circumstantial evidence is irresistibly pointing a blameworthy finger towards the accused person thus lending credence to the testimony of pw2. The mere discrepancy on the time actual time the death occurred or body was found is not fatal nor material contradiction.
64. In *Abanga alias Onyango v Republic*, Cr. App No. 32 of 1990 the court of appeal had the following to say regarding circumstantial evidence:

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”

(See also *Sawe v. Republic* (supra) and *GMI v. Republic*, Cr. Ap. No. 308 of 2011.

In addition, the prosecution must establish that there are no other co-existing circumstances, which would weaken or destroy the inference of guilt.

(See *Teper v. R.* [1952] All ER 480 and *Musoke v. R.* [1958] EA 715). In *Dhalay Singh v Republic*, Cr App. No. 10 of 1997, this Court reiterated this principle as follows:



“For our part, we think that if there be other co-existing circumstances which would weaken or destroy the inference of guilt, then the case has not been proved beyond any reasonable doubt and an accused is entitled to an acquittal.”

65. From the testimony of pw1 and pw2, it is apparent that the accused person was positively identified by pw2 being a person known to him before and that there was no mistaken identity the offence having been committed during the day. Identification was therefore by recognition. To that extent, the person responsible for the death of the deceased was the accused. His defence that he found the deceased lying dead on the roadside and that he left for fear of being implicated after alerting carol the deceased's wife is not convincing.

66. On whether the accused person was possessed of malice aforethought, section 206 of the Penal Code provides that;

“206. 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.”

67. Therefore, malice aforethought may be inferred from the nature of the weapon used, the manner of attack, or the intention to commit a felony. In this case, PW5 stated that the deceased had an injury on the neck wherein, there was a deep cut measuring 11 cm by 4 cm by 5 cm, which involved the cervical bones and severed backbone which clearly demonstrates malice aforethought. See *Tubere S/O Ochen v Republic* [1945] EACA 63 where the court outlined the circumstances under which malice aforethought can be inferred:

- (a) The nature of the weapon used against the deceased to inflict injuries.
- (b) The part of the body targeted by the attacker whether vulnerable or not.
- (c) The manner in which the lethal weapon was used. Whether in furtherance to cause grievous harm the assailant used the weapon repeatedly.
- (d) The conduct of the accused before, during and after the attack of the deceased.

(See also the commentaries by Musyoka J in his book on Criminal Law at pg 311 – 319)

68. Taking into account the weapon used which was a panga and the delicate part of the body aimed at in this case the neck, malice aforethought is clearly established.

69. For these reasons, I am satisfied that the prosecution has proved its case beyond reasonable doubt. The accused is hereby convicted of the offence of murder contrary to section 203 as read with section 204 of the penal code.



DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF FEBRUARY 2026

.....

J.N.ONYIEGO

JUDGE

