

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL CASE NO. E043 OF 2021

REPUBLICPROSECUTOR

VERSUS

1. DENNIS CHERUIYOT1ST ACCUSED
2. ALICE CHEPNGETICH MALIT2ND ACCUSED
3. JAPHET KIPNGENO BETT3RD ACCUSED
4. PATRICK KIPLANGAT4TH ACCUSED

RULING

1. The four accused persons, ***Dennis Cheruiyot , Alice Chepngetich Malit , Japhet Kipngeno Bett , and Patrick Kiplangat*** , are charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, Cap 63 Laws of Kenya.

2. The particulars of the offence are that on the night of 4th May 2021 and the early morning of 5th May 2021, at Torit village in Kaptoboit location of Belgut Sub-County within Kericho County, jointly with others not before the court, they murdered ***Samson Kibet Malit (the deceased)***.

3. The prosecution has called a total of seven (7) witnesses in support of its case and has tendered several exhibits, including a

post-mortem report, a Government Analyst's report, and physical items recovered from the scene of crime.

4. At the close of the prosecution's case, both counsel indicated that they would leave the matter of whether a prima facie case has been established to the court's discretion. No oral or written submissions were tendered.

5. Section 306(1) of the Criminal Procedure Code requires that at the close of the prosecution's case, the court shall consider whether the accused has a case to answer. If the court finds that no prima facie case has been made out, it shall acquit the accused. If a prima facie case is established, the accused shall be called upon to enter their defense.

6. The threshold for a prima facie case is well settled in our jurisprudence. In the locus classicus ***Ramanlal Trambaklal Bhatt v R [1957] EA 332***, the Court of Appeal for Eastern Africa held;

"It may not be easy to define what is meant by a prima facie case, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defense."

7. The court is not required at this stage to determine guilt or to weigh the evidence as if it were convicting. The sole question is whether the evidence, taken at its highest, is sufficient to require the accused to offer an explanation.

8. I have carefully considered the testimony of all seven prosecution witnesses and the exhibits tendered. The following is a summary of the evidence relevant to this ruling;

9. PW1, **Everlyne Cheptoo Koech** testified that on the morning of 5th May 2021, she met the 2nd accused. The 2nd accused told her she had gone to Mercy's home to borrow soap and requested PW1 to accompany her to her house to assist in spreading duvet to dry. They did so, and PW1 left. Later that day, she learned that Samson, the husband of the 2nd accused, had been murdered. She was shocked because she had visited their home that morning.

10. PW3, **Brian Kipchirchir** testified under oath. He stated that he is 16 years old and that he knows the accused persons. On 4th May 2021, he was sent by his mother (the 2nd accused) and his brother to board a motorbike to his grandmother's house. He was sent to fetch beans. Upon reaching his grandmother's house at four o'clock, he found his grandfather and his aunt called Mercy. His mother, the 2nd accused, had told him to sleep over at his grandmother's house. His sister's son called Rodger was told by his uncle Patrick "**that my father had been killed.**" PW3 testified that his uncle Patrick did not know that he (PW3) was there when this statement was made. Uncle Patrick then took PW3 home, where he found four people gathered. He later learned that his mother (2nd accused) and his brothers had been arrested.

11. **PW4, Dr. Wesley Rotich** testified that he conducted a post-mortem examination on the deceased. He found multiple deep wounds to the head with brain tissue exposed, a cut wound on the left middle finger with a fracture, multiple bruises on the chest, fractures of the ribs, and injuries to both eyes. He formed the opinion that the cause of death was severe head injury due to trauma to the head by a sharp object. He produced the post-mortem report as an exhibit.

12. PW5 William Lelgo testified that on 3rd May 2021, the 2nd accused called him offering to sell a cow for Ksh. 28,000/- to pay school fees. He borrowed the money from a friend and paid the 2nd accused. He took the animal to the market. When he arrived home in the evening, he found people saying someone had been killed and the body abandoned at the river. He later learned the body belonged to Samson Malit, whom he knew. He attended the burial.

13. PW5, **Everlyne Triza Chepkemoi**, the daughter of the deceased, testified that on 4th May 2021 at around 8:00 p.m., she received a phone call from her father. He invited her to visit him at home. She was hesitant due to a bad relationship with her mother (2nd accused), but eventually agreed. On 5th May 2021, she arrived home and found a large crowd gathered. She entered the sitting room and was told her father had been injured and taken to a health centre. She went to her uncle, a person named Patrick, who told her, "sorry because her brothers and mother killed my father and threw him in the river." She was later

informed that the body had been taken to the mortuary. She went to the mortuary and identified her father's body. She observed multiple cuts all over the body. She described the family relationship as strained, stating that her mother sided with her brothers against her father, and that there were constant quarrels.

14. PW6, **Polycarp Luta Kweyu**, a government analyst with 13 years of experience, testified that he received various items for DNA analysis, including clothing belonging to the 1st accused, a wheelbarrow, a duvet, a television set, swabs, and blood samples from the deceased and the accused persons.

15. His findings, contained in the report dated 18th October 2021 and produced as an exhibit, were as follows:

a. The DNA profiles generated from the blood stains on the television set (item "E"), the swab (item "G"), the khaki envelope (item "F"), and the duvet (item "D") matched the DNA profile of the deceased.

b. The DNA profile generated from the blood stains on the red t-shirt (item "A") was a partial DNA profile of a single unknown male person.

c. The DNA profile generated from the blue trousers (item "B") was a partial DNA profile of a single unknown female person.

d. The DNA profile generated from the blood stains on the wheelbarrow (item "C") belonged to a single unknown female person.

e. The DNA profiles of all four accused persons did not match any of the DNA profiles generated from the blood-stained items.

16. PW 7 Pc **Justice Simiyu**, testified that he visited the scene of crime at Torit village. In the deceased's bedroom, police recovered a blood-stained television set, a blood-stained wheel barrow, a blood-stained khaki envelop, a blood-stained wet duvet, and a blood-stained t-shirt. At the river scene, they recovered the body of the deceased from the water. He testified that during interrogation, it was

17. I have considered the totality of the evidence adduced by the prosecution. The question I must answer is whether a reasonable court, properly directing itself to the law and the evidence, could convict the accused persons if they offered no explanation in their defense.

18. The prosecution's case rests on several strands of evidence;

19. PW6, the daughter of the deceased, testified that her uncle, a person named Patrick, told her: "sorry, because my brothers and mother killed my father and threw him in the river."

20. This statement is a direct confession by an individual named Patrick. Critically, the statement implicates "her brothers"

(meaning the brothers of PW6) and "mother" (meaning the mother of PW6, who is the 2nd accused).

21. The brothers of PW6 are the 1st accused (Dennis Cheruiyot) and the 3rd accused (Japhet Kipngeno Bett). The 4th accused (Patrick Kiplangat) is also a brother to PW6. The confession therefore directly implicates the 1st, 2nd, 3rd, and 4th accused as the persons who committed the killing.

22. The fact that the confession was made by an individual named Patrick, who is himself an uncle to PW6 and thus also a brother to the 2nd accused, does not diminish its value as evidence against the other accused. The statement identifies the perpetrators by their relationship to PW6: her mother and her brothers.

23. If this evidence is believed, it is sufficient to place all four accused persons at the scene of the crime and to implicate them in the killing. The weight and credibility of this confession is a matter for trial, but at this stage, it is evidence that a reasonable court could act upon.

24. PW3 testified that his uncle Patrick told another person named Rodger "that my father had been killed." While this statement does not itself constitute a confession, it is consistent with knowledge of the death and, when considered alongside PW6's testimony, forms part of the broader narrative of the case.

25. The evidence against the 2nd accused is both direct and circumstantial. Her conduct on the day of the murder is significant;

a. She sent her son (PW3) away to his grandmother's house on the night of 4th May 2021 and instructed him to sleep there, ensuring he was not present at the home.

b. On the morning of 5th May 2021, she borrowed soap and was seen washing clothes though she had been sick.

c. She sold a cow for Ksh. 28,000/-, telling PW5 it was to pay school fees.

d. The deceased's blood was found on items inside the matrimonial home, including the duvet and television.

e. According to PW7, she sought assistance to clean the room.

26. Each of these acts, viewed in isolation, might be susceptible to innocent explanation. However, when viewed together and in the context of the murder of her husband, they constitute evidence from which a reasonable court could infer preparation for, participation in, or concealment of the crime.

27. The medical evidence establishes that the deceased died from multiple sharp object wounds to the head and body. The scene evidence establishes that the deceased's blood was found on items inside the matrimonial home. This places the assault inside the home where the accused persons lived.

28. I am mindful of the Government Analyst's findings. It is a matter of record that the DNA profiles of the four accused persons did not match any of the blood stains on the exhibits submitted for analysis. However, the absence of the accused persons' DNA on the blood-stained items does not, at this stage, negate the other evidence on record. The confession by Patrick, as testified by PW6, directly implicates all four accused. The weight to be given to the DNA evidence, and whether it ultimately creates reasonable doubt, is a matter for trial after the defense has had an opportunity to respond.

29. As the Court of Appeal stated in ***R v Jagjiwan M. Patel & Others [1942] 1 EACA 47***, a prima facie case is made out where the evidence is such that a reasonable tribunal could convict if no explanation is offered. In this case, if the accused offer no explanation, the evidence against them includes a direct confession identifying them as the perpetrators, evidence of conduct consistent with preparation and concealment, and forensic evidence placing the deceased's blood inside the home.

30. After a careful and anxious consideration of all the evidence adduced by the prosecution, I find that the prosecution has established a prima facie case against all four accused persons sufficient to require them to be put on their defense.

31. Accordingly, Pursuant to Section 306(2) of the Criminal Procedure Code, I find that each of the four accused persons has a case to answer and are hereby placed on their defense.

**Dated, signed and delivered at Kericho this 19th day
of March, 2026**

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**J. K. SERGON
JUDGE**

In the presence of:

C/Assistant - Rutoh/Naomi

Prosecutor - Kimaru

Accused 1 - Present in Person

2 - Present in Person

3 - Present in Person

4 - Present in Person

Kirui & Nyadimo for the Accused