



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYANDARUA
CRIMINAL CASE NO. E006 OF 2024

REPUBLIC.....PROSECUTOR

VERSUS

JOHN KAHORO KURIA..... ACCUSED

JUDGMENT

1. John Kahoro Kuria is charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 5th day of November 2023, at Simba River, Ololiondo village, Nyandarua Central Sub-County of Nyandarua County, jointly with another person not before the court, they murdered John Ngige Wambui.
3. The deceased was a teacher at Kahombe Primary School and also worked part-time as a boda-boda rider. On November 5th, 2023, he was summoned to transport a passenger but was not seen alive afterwards. The accused was associated with the call that caused the deceased to leave to ferry a passenger, and some of his belongings were discovered in the accused's house.
4. In his defence, the accused stated that he was at the butchery where he worked until 9 p.m. on that day, and then he went home. He denied any involvement in the deceased's death.
5. The issues to be determined are:
 - a) Whether the accused was in any way connected with the disappearance of the deceased;
 - b) Whether there is evidence that links him to the subsequent death of the deceased; and
 - c) Whether the offence of murder was established against the accused.
6. Monicah Wambui Wairimu (PW2) was the deceased's girlfriend. She travelled to Ol Kalou to visit him on November 3, 2023. She testified that on November 4, 2023, he received a call asking him to transport a passenger to a place known as Captain to pick up his wife.

However, he forgot about this task and was reminded the next day around 8:45 p.m., when he left. At approximately 11 p.m., she called his phone, but the call was disconnected. When he did not return, she contacted another teacher, and a search for him began.

7. IP Irene Chelimo (PW4) stated that after learning the deceased had been called to transport a passenger, they requested call data from Safaricom for his phone number 0794 140 152. The call records linked them to the accused. 8. When police officers, including PW4, arrested the accused, they took him to his residence. During the search, they found a mobile phone with EMEI NO. 860692057326913 and EMEI2-860692057326921 that belonged to the deceased. This phone was paired with a sim card No. 0105788773 owned by the accused. 9. At the same house, officers recovered a motorcycle umbrella, a wallet with John Kahoro Kuria's ID card (number 37568569), who is the deceased, and an ITEL phone with IMEI NO. 3500479573022000, paired with Safaricom line number 0794140 152, also belonging to the deceased. All items were documented in an inventory signed by the officers and the accused.
8. The evidence of the motorcycle's recovery left loose ends, and this court will not place any reliance on it. It was desirable to call Michael Kamau, from whom the motorcycle was recovered, and who claimed that it was taken there by the accused. His evidence implicating the accused is inadmissible hearsay. The prosecution did not explain why he was not called. The circumstances of this case required him to be called, as it was clear there was more than one player in the commission of the offence.
9. In his defence, John Kahoro Kuria described how he was arrested at his workplace, the butchery, and then taken to his home. He argued that they confiscated a faulty phone from his house and also took his employer's phone from his pocket. He therefore denied any involvement in the offence.
1. This is an apt case to invoke the doctrine of recent possession. 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 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.

10. Although the accused denied involvement in the deceased's death, there is substantial evidence indicating he lured the deceased from his house and was later found in possession of the deceased's belongings, for which he provided no explanation.
11. The prosecution must establish the presence of malice aforethought to secure a conviction based on the evidence on record. 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).

12. 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.*

13. Dr Lucy Nyachae conducted a post-mortem examination of the deceased's body, which showed numerous injuries. These included a fractured skull.

14. Considering the evidence presented by the prosecution as a whole, it adequately establishes the murder charge against the accused. Consequently, I find him guilty and convict him of this offence.

Delivered and signed at Nyandarua, this 19th day of March 2026

**KIARIE WAWERU KIARIE
JUDGE**