

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KERICHO**  
**CRIMINAL CASE E011 OF 2024**

**REPUBLIC.....PROSECUTOR**  
**R**

**VERSUS**

**NICHOLAS KIBET NGENO.....1<sup>ST</sup>**  
**ACCUSED**

**NICHOLAS KIPKEMOI RONO.....2<sup>ND</sup>**  
**ACCUSED**

**JUDGMENT**

1. **NICHOLAS KIBET NGENO** and **NICHOLAS KIPKEMOI RONO**, the Accuseds herein, is before this Court charged with the information of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The Particulars of the information are that on the 3<sup>rd</sup> day of April, 2024 at Tendwet Sub - location Kapsaos Location, in Kericho East Sub-County within Kericho County, the Accused Persons jointly murdered **COSMAS KIPTOO LANGAT**.

2. The prosecution summoned eight (8) witnesses to testify in support of its case against the accused.

3. The Accused Persons testified giving sworn evidence in their defence and did not summon any witnesses.

4. Eight witnesses testified in support of the Prosecution case. **PW1, Gideon Kiplangat**, stated that on the material day he and the deceased were from a changaa den in Binyiny village when they were accosted by the accused persons who were well known to them, he testified that the deceased used his phone's

flash light, he said he saw the accused assault the deceased, he fled and informed the deceased wife, the body of the deceased was recovered about 100 meters away from where the altercation took place.

5. PW2, Mercy Chebet, the wife to the deceased testified that on the material date PW 1 went to her homestead and informed her that they had been attacked together with the deceased by the accused persons, she further testified that they tried to trace the deceased that night but their efforts were thwarted by heavy rains and that the body of the deceased was recovered at a nearby bush on the following day. She testified that Nicholas Kibet the 1<sup>st</sup> accused had grudge with the husband as the husband was a prosecution witness in a case of defilement where the accused was charged in court. She further testified that he had torched her house and that during the awful incident she sustained some burns.

6. PW .3 a cousin to the deceased, testified that they received information that the deceased had been murdered he identified the body of the deceased at mortuary and that he attended the autopsy.

7. PW. 4 the assistant chief Tendwet Sub Location testified that on the material day, he received a report that the accused had attacked PW 1 and the deceased. He narrated's that the following day the body of the deceased was recovered and that he accompanied the officers to the crime scene, the body was taken for preservation and the accused went into hiding, however they were arrested at a later day. He testified that the deceased was a

witness in a defilement case **No. E091 of 2023 R v Nicholas Kibet Ngeno at Molo Law Courts.**

8. PW 5, **Dr. Kiprono Robert Koech**, a medical officer, testified that the body had several cut wounds all over his body, he conducted an autopsy and formed the opinion that the cause of death was severe head injury and hemorrhage.

9. **PW 7, P.C. Eric Onala**, testified that he received a call from the OCS Brooke Police Station in respect to a murder case and together with C. I Thomas Ouma they visited the scene of crime where they found a uncovered body with several cut wounds. The body was taken to Kericho Referral Hospital he states it's the first accused who lead them to where the 2<sup>nd</sup> accused was, that the accused were apprehended on 9<sup>th</sup> April 2024.

10. PW8, PC Kimutai Langat, the scenes of crime officer testified that he documented the crime scene by taking several photographs which he processed and certified and produced in court.

11. In their defence, the DW 1 Nicholas Kibet Ngeno testified that that on the material date he was at home and that he did not meet with PW 1 and the deceased, he denied assaulting anyone. He acknowledges that he knows PW 2. and that her house was burnt but denies the allegations that he is the person who burnt it. He further agrees that he was charged with a defilement case but was acquitted after trial. he states that he was arrested while seeking for treatment after being assaulted.

12.DW 2 Nicholas Kipkemoi Rono testified that he schooled with PW1 and that he had known the deceased since childhood he states that the last time he visited Tendwet was in 2023 on cross examination he stated that he was in Kipsitet on the material day but had no evidence to prove.

13. In order for the offence of murder to be proved, two ingredients must exist; First, the act of death taking place (actus reus) and Secondly, malice aforethought (mens rea).

14. In this case, there is no doubt that the Accused's were placed at the scene of crime. There is also no dispute that the deceased died as a result of severe head injury and haemorrhage following assault with a sharp object. The element of actus reus is established.

15. The second element is malice aforethought. Section 206 of the Penal Code defines malice aforethought as intention to cause death or grievous harm, knowledge that the act will probably cause death, or intent to commit a felony.

16.The evidence against the accused persons' rests largely on visual identification. The court is alive to the danger of relying on such evidence. In R v Turnbull the court of appeal emphasized on the need for caution and held that courts must carefully examine the circumstances under which identification is made to eliminate the possibility of error. In the present case, the identifying witness PW1 testified that he recognized the accused persons using the deceased's phone's flash light at a close range and that he had known them before. The encounter was not fleeting and he made

a report immediately. The conditions for identification were therefore favorable.

17. In ***Republic v Tubere s/o Ochen (1945) 12 EACA 63***, the court held that malice aforethought is inferred from the circumstances of the case, including the nature of nature of the weapon used, the part of the body targeted, the manner of use and the conduct of the accused before and after the attack. The evidence of PW1 was that the deceased was violently assaulted, this is collaborated by the medical evidence showing severe head trauma.

18. Similarly in ***Nzuki v Republic [1993] eKLR***, the court held that malice aforethought is inferred from the nature of the weapon used, the manner of its use, and the part of the body targeted. Here, the deceased sustained severe head injuries, the head is a vital part of the body, the attack was deliberate and targeted and they fled immediately after the assault and went into hiding.

19. The evidence here shows intention to cause grievous harm, even if the accused did not intend to kill, intention to cause grievous harm is sufficient to establish malice aforethought under section 206 (a) of the penal code.

20. Having established the ingredient of malice aforethought, the court finds the accused guilty of the offence of Murder Contrary to Section 203 as read with section 204 of the penal code and convicts them accordingly.

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

**of March, 2026**

.....  
**J. K. SERGON**  
**JUDGE**

In the presence of:

C/Assistant - Rutoh

Prosecutor - Kimaru

Accused - Present in Person

Munga for both Accused Persons