



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NUMBER E031 OF 2021

REPUBLIC

ODPP

VERSUS

PAUL KIPKEMOI CHIRCHIR

ACCUSED

JUDGEMENT

1. The Accused is charged with **Murder Contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars of the information presented to this court is that on 24th June 2021 at Set Kotes Village in Kuresoi North Sub-County, within Nakuru County he together with others not before the court murdered Justus Muinde Metho (“the

Deceased”). The Accused entered plea of “Not Guilty” to the offence.

2. This court got seized of this matter after recording of part of the evidence by my brother H.M Nyaga J who has since left this jurisdiction. When I took over the case on 15th October 2024, I directed hearing to continue from the point the immediate former trial court had left off.

The Prosecution Evidence

3. PW1 was at the material time a Production Supervisor at Molo Greens Company. On the material date at around 3:00 p.m. she left her employer’s flower farm to meet with the Company’s Human Resources Administrator to attend to his faulty computer. The Administrator known as Chege transported PW1 to the office on his motorbike so they could check the computer. Earlier in the morning the Deceased, the Director of the Company, had driven PW1 to the flowers farm in his car to conduct some field work. At about 11:00 a.m. PW1 left the farm to take tea but she did not find the Deceased when she returned to the farm. At 12:20 p.m the Deceased rang her up inquiring on her

whereabouts. She informed him that she was still at the farm.

4. As PW1 rode with Chege to their office, her other colleague called Chris telephoned her and sought to speak with Chege through her phone. She passed her phone to Chege who spoke with the caller before handing back the phone to her. Chege did not relate to PW1 the conversation he had with the caller.
5. When they got to a tarmac road ahead, PW1 and Chege saw a stationery probox vehicle on the road. Behind it was the Deceased's vehicle. To their horror, the Deceased lay dead in a pool of blood inside his vehicle. PW1 raised alarm and a woman washing clothes nearby informed them that she had seen someone alighting from the Deceased's vehicle carrying a bag. The person had proceeded to board a Matatu which drove towards Keringet.
6. PW1 further testified that earlier that day the Deceased had harvested potatoes on his farm in the company of the Accused who was his friend, although the witness said she did not actually see the Accused that day. After harvesting

the potatoes the Deceased was said to have waited for payment. PW1 rang up the Accused and relayed the bad news of the deceased demise to him. The Accused promised to go to the scene but never did. According to PW1, the Accused was a close friend of the Deceased. The latter used to give the Accused potato tubers for planting. The Accused had also introduced a potatoes buyer to the Deceased in the year 2020.

7. PW2 was the owner and driver of the probox vehicle alluded to hereinabove. He stated that on the date in question at around 3:25 p.m. he came upon a vehicle he recognized to belong to the Deceased whom he knew having previously worked together with him at Kazan Flowers Farm. The Deceased thereafter had gone on to start his own company, the above stated Molo Greens Company.
8. PW2 continued to tell the court that the Deceased's vehicle was parked on a feeder road off the tarmac with its hazards lights on. He noticed that the car's windscreen was shattered. He recognized the Deceased lying in the vehicle

but he was unresponsive. The two had met the previous day, and the Deceased was still wearing the same clothes. His neck appeared severed or slit.

9. PW2 called the police, PW1 and the said Chege to inform them of the incident. Like PW1, PW2 also spoke of a lady who reportedly saw someone getting off the Deceased's car and boarding a matatu while carrying a bag.
10. PW3 testified that he was also an employee of the Deceased's Molo Greens Company. At around 4:00 p.m. that day his uncle called Joshua asked him to go to the Company's offices to learn what had happened to the Deceased who was his uncle too. The witness placed a call to the Accused who was the Deceased's friend and informed him of the death after which the two agreed to meet up at the "County". The Accused could not subsequently be reached through his phone. The witness was then alerted of sighting of the Deceased's car and he went there. A crowd that included the Deceased's work mates had gathered there. Police officers were also there and removed the body from the same.

11. PW3 confirmed PW1's evidence that the Deceased and the Accused harvested potatoes on the fateful day. The two had also collected PW2's potatoes for which he was expecting payment which the Accused had promised to make. PW2 next saw the Accused in police custody and that the latter directed him to the place where his potatoes were.
12. The Deceased's wife (PW4) is among the prosecution witnesses. On 12/6/2021 the Deceased had told her about someone who had attacked him. He protected himself by locking himself in the house. The Deceased did not reveal the attacker.
13. PW4 further stated that on 20/6/2021 the Deceased started harvesting his potatoes and disagreed with the Accused over down payment by clients. The Accused is said to have been his partner in the potatoes trade and would source for customers.
14. On the date of the Deceased's killing, he is said to have called PW4 while he was in Molo telling her that a customer had made a deposit of Kshs. 1,000,000/= to him towards purchase of potatoes. He further indicated that he

expected to earn a total of Kshs. 10,093,000/= from his potatoes sale. Then at around 4:00 p.m. that evening she learnt that her husband had been injured. When she went to see him at St. Joseph's Hospital at Molo, she was met with the grim news of his death. As stated by PW1, PW2 and PW3, PW4 also told the court that the Accused never contacted her family members following the Deceased's demise despite being his close associate.

15. To further show their tight business partnership, PW4 added that the Accused had helped the Deceased to lease land at Chebelion farm, Mwinduko, Maki Punda and Mwikanyei. The Deceased harvested 960 bags of potatoes from the leased pieces of land.
16. PW5 testified as a Medical Officer who conducted autopsy on the Deceased's body at St. Joseph's Nursing & Maternity Home, Molo. The Kenya Medical Practitioners and Dentists Board is said to have licensed him to carry out autopsy examination. A cut wound was observed on the neck, which exposed the trachea. A superficial cut wound was also on the deceased's left shoulder. Among other findings were

other cut wounds to the head and spinal column. The expert witness opined that the cause of death was traumatic spinal injury, likely caused by a machete/panga. The Post Mortem Report dated 25/6/2021 was tendered and admitted in evidence.

17. PW6 testified that at the material time he worked at the Deceased's Chebelion farm as a night guard. On 24/6/2025 at around 11:00 a.m. while in his house within the farm, he saw four men he did not know coming from the farm and sitting on a nearby field. They had a container of potatoes. Potatoes were being harvested in the farm at the time. A car belonging to the owner of the farm appeared at around 12:45 p.m. PW6 said he did not know the car owner that well. The vehicle turned to face the direction it had come from. Then a motor cycle rider emerged from the farm and spoke with the vehicle driver before riding back towards the farm. The four men that were seated on the field boarded the car which was driven off. One of the men had a rungu fitted with a metal part. The witness identified the

object in court. Later in the evening at around 5p.m. he heard of killing of the vehicle owner.

18. According to PW6, the Accused was the motorbike rider who talked with the car owner before returning to the farm. The Accused used to supervise at the farm, adds the witness. Rather inconsistently, PW6 stated that he did not know the Accused and that he only came to know him after the murder incident. He never saw him or the four men again that day.

19. PW8 stated that the Accused was his neighbour of about 5 years. On 24/6/2021 at around 10:00 a.m. the witness testified to receiving a call from his father who requested him to transport him to the farm of one Chebelion. He did ferry his father to the farm on his motorcycle. At the farm, they found one Ezra together with the wife of one Cosmas. The two told PW8 and his father that they were waiting for the Accused. The Accused soon arrived walking. A motorcycle also pulled up and the Accused asked the witness to accompany the rider to a place he was going to and then ride the motorcycle back. PW8 agreed and left

with the stranger up to the lower part of the farm where they came upon three other men. As directed, he returned the motorbike to the Accused and found him and Cosmas dividing land they had leased together. The survey work was completed at noon after which PW8 went back home with his father. In the evening that day he learnt of the death of a manager of the farm.

20. PW9 is the Case Investigating Officer who took over the investigations file from another officer called Cpl Koech. According to PW9, Cpl Koech has since died. The witness had taken custody of a wooden "Maasai rungu" with a metal head that was suspected to have been used to kill the Deceased. The club was exhibited in support of the prosecution case.

21. The Accused gave sworn evidence in his defence. He stated that on 24/6/2021 when the Deceased was allegedly killed, he had woken up and went to Chebelion Farm to carry out some survey work. He arrived on the farm at around 10:00 a.m. to meet with one Franklin (PW8) and Rutto who were waiting for him. The Accused showed them land that was

to be surveyed. They finished the survey work at around 11:30 a.m. The Accused's cousin had leased the surveyed land.

22. Earlier that day at around 9:00 a.m., the Accused continued, the Deceased had driven near his home and rang him up requesting for milk delivery. The court was told that the Deceased regularly took milk delivery at the Accused's home. The Accused delivered the milk to him at a nearby road. The Deceased was driving his Double Cabin Pick up Motor vehicle. He had first met him in 2017 and afterwards they started dealing in potatoes. The Accused later assisted the Deceased to lease land at Chebelion farm.

23. The Accused further testified that on the fateful day while he was at Keringet, PW1 rang to inform him of the Deceased's death. When he went to the scene of the killing, he found out that the police had removed the body. While he was preparing to go and see the deceased's body in the mortuary the following morning, Police officers summoned him to Molo Police Station. He was interviewed and arrested over the death of the Deceased.

24. The Accused denied killing the Deceased who he confirmed to be his close friend and potatoes farming associate. He was aware that the Deceased was harvesting potatoes on 20/5/2021 and he requested him to keep some for him in his store. He had acceded to his friend's request.
25. While acknowledging that he knew PW6 as a watchman at Chebelion farm, the Accused denied having met him on 24/6/2021. He appeared to say the persons he was with at the farm were assisting him to survey land leased by his cousin.
26. I have perused the evidence proffered and written submissions of the Prosecution and Defence Counsel in relation to the charge facing the Accused. The sole issue for determination is whether the prosecution has proved beyond reasonable doubt that the accused murdered the Deceased, actuated by malice aforethought.
27. There is no direct evidence linking the Accused to the death as none of the witnesses testified to seeing the Accused commit the offence. Determination of the case therefore wholly depends on circumstantial evidence. In **Mwangi vs**

Republic (Criminal Appeal No. E054 of 2023) [2024] KEHC 3113 (KLR) 15 March 2023) (Judgment) this court explained that for circumstantial evidence to be reliable it must be inconsistent with the accused person's innocence.

28. In the case of **Ahamad Abolfathi & Another vs Republic (2018) eKLR** also cited by the Prosecution and Defence Counsel, it was elaborated that;

“circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence.”

29. In a much older case (**Republic vs Taylor, Weaver & Donoram (1928) Cr. Application R 21**), it was observed that;

“Circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that is circumstantial.”

20. In the often quoted case of **Sawe vs. Republic (2003)** **KLR 364**, it was stated that circumstantial evidence must satisfy three tests, namely;-

“the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; 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.”

21. As in the case of **R vs Kipkering Arap Koskei (1949)** **EACA 135**, the prosecution must also show that there existed in-culpatory facts that were incompatible with the innocence of the accused and incapable of any explanation upon any other reasonable hypothesis other than that of guilt.

22. **Section 206 of the Penal Code** provides that malice aforethought is proven by one or more of the following circumstances;-

a. **Intention to cause death or do grievous harm whether the death actually occurs or not.**

- b. **Knowledge that the act or omission causing death will probably cause the death or grievous harm to a person, whether the death is actually caused or not.**
- c. **An intention to commit a felony.**
- d. **An intention by an act or omission to facilitate flight or escape from custody of any person who attempts to commit a felony.**

23. The prosecution does not have to prove the motive for commission of any crime, and neither is the evidence of motive sufficient by itself to prove commission of a crime by a person who possesses the motive {(see **Case law in Robert Onchiri Ogeto vs Republic (2004) KLR (1a)**}.

30. As noted the case depends exclusively on circumstantial evidence since there is no eye witness to the killing. PW1, PW3 and PW4 appear to suspect the Accused as the killer since despite being the deceased's close associate, he never went to the scene where the deceased was found dead. PW6 told the Court that a car belonging to the deceased had driven to Chebelion Farm on 24/6/2021 at around 12:45 p.m. A motor cycle rider then emerged from the farm and spoke with the vehicle driver before riding back into the

farm. 4 men sitting near the farm then boarded the vehicle which drove away.

31. PW6 says he identified the motorcycle rider as the Accused and that he used to supervise work on the farm. Inconsistently, PW6 seems to say he only came to know the accused after the incident.
32. Circumstantial evidence herein is clearly weak. The accused explained that he had arrived at the scene when the body had already been removed. Even failure to visit the scene at all is not sufficient to prove his guilt unless other evidence irresistibly points to his culpability.
33. PW6 stated that he did not know the deceased quite well and he had not alighted from his vehicle when he was at Chebelion Farm on the material date. It is not therefore clear whether the deceased was in the vehicle at the time.
34. It appears that 4 persons who allegedly boarded the Accused's motor vehicle as per PW6's evidence were suspected to be the killers in concert with the Accused. A lady who is said to have seen one unidentified person coming off the deceased's vehicle at the place where he was

found dead has not been called to testify and show whether she could identify the Accused as the person. PW8 appears to corroborate the Accused's evidence that he was at Chebelion Farm on the date in issue to help conduct survey of land there. As per PW 4's evidence, the Deceased did not disclose the person who had attacked him earlier on 12th June 2021.

35. On the evidence and in the circumstances, the Prosecution has not proven the Accused's guilt beyond reasonable doubt. The circumstantial evidence presented does not point only to his culpability. He is accordingly acquitted of the offence pursuant to the provisions of **section 215 of the Criminal Procedure Code.**

J. M. NANG'EA - JUDGE

Judgement delivered virtually this 12th day of March, 2026.

In the presence of:

Mr. Wakasyaka for the DPP

Ms Ngugi Advocate for the Accused

Mr. Farah Advocate for the Deceased's Family

Accused, present

Court Assistant (Jeniffer)

J.M. NANG'EA - JUDGE.

ORIGINAL