

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL CASE NO. 58 OF 2021

REPUBLICPROSECUTOR

VERSUS

**1. CHRISTOPHER KIBET TERER1ST
ACCUSED**
**2. DONALD KIPKOECH A. BETT
ALIAS MORENO 2ND
ACCUSED**
**3. ALBERT KIPNGETICH KOECH3RD
ACCUSED**
**4. WILLY KIPKOECH KIRUI4TH
ACCUSED**

RULING

1. The four accused persons are 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 diverse dates between the evening of 4th August 2021 and 5th August 2021, at an unknown place within the Republic of Kenya, jointly murdered Alex Cheruiyot Kirui (hereinafter "the deceased").

2. The prosecution called a total of eleven witnesses in support of their case. At the close of the prosecution's case, the defence, through their submissions dated 24th January 2026, urged this court to find that no prima facie case has been established

against any of the accused persons and to acquit them accordingly.

3. I have carefully considered the evidence adduced by the prosecution, the submissions filed by the defence, and the applicable law. What follows is a summary of the testimony of each prosecution witness and my analysis of whether a prima facie case has been established.

4. **PW1 - Caroline Njeri Mumbi** testified that in May 2021, she sold her motor vehicle, registration number KDC 661 H, a Toyota Fielder, to Christopher Kibet Terer, the 1st accused, for Kshs. 1,150,000/-. She stated that the logbook remained in her name as the transfer was never completed despite three attempts through NTSA. She later learned that this motor vehicle was used to commit a crime. Under cross-examination, she stated that her partner, Festus Arasa, was the one who actually sold the vehicle, and she had no evidence to show that Festus was her partner.

5. **PW2 - Kipkurui Bii Hillary**, a bar attendant at Simba Inn Hotel in Kericho aged 26 years, testified that on 4th August 2021 at about 7:50 PM, the deceased called him to ask if the bar was still open. A Toyota Fielder arrived and stopped near the bar, with the deceased seated in the front passenger seat. He and two others, Sarah Halima and Geoffrey Cheruiyot, sat at the back seat. He handed over two bottles of Guinness beer to the occupants. They were dropped off near Kipsigis Girls High School,

and the deceased suggested taking a bypass to avoid a police roadblock. The deceased never called him back, and when he tried calling, the phone was off. On 6th August 2021, he received a call from Eliud Kirui informing him that a dead body had been found. He provided the vehicle's registration number to the police. Under cross-examination, he stated that he had known the deceased since childhood but that the accused persons were strangers to him.

3. **PW3- Koskei Kiplimo Nathan**, a teacher at Kericho Primary School, testified that he knew the deceased and Willy Kipkoech Kirui (the 4th accused) because the deceased had taken him to his home, and the 4th accused was an uncle to the deceased. On the morning of 5th August 2021, he called Wesley, a friend of the deceased, who told him he was to inquire but did not call back. He later discovered that the deceased had transferred money to Wesley's number. He reported to the police, who tracked the transaction and located the phone. He called the deceased's father, who had not seen the deceased. On 6th August 2021, while travelling to Kisii, they received a phone call that a body had been found in Longisa. They turned back and identified the body at the mortuary. The deceased's body had a swollen head and a mark on the neck. Under cross-examination, he stated that he only knew Willy (4th accused) and that they had visited his home in 2019 together with the deceased.

4. **PW4 - Jonah Kipkurui Ngetich**, a farmer in Kibirbir and father of the deceased, testified that he knew three of the accused persons namely Robert Albert (3rd accused), Christopher (1st accused), and Willy (4th accused), and that he was a cousin to the fathers of the 3 accused persons. On 5th August 2021, he received a phone call from Nathan (PW3) asking him whether the deceased, had gone home the previous night. He rushed to Kericho Police Station and met PW3, who had already made a report of a missing person. The next day, they planned to travel to Kisii where the deceased's phone was traced. On their way, PW3 received a phone call telling him to go and identify a body. Under cross-examination, he stated that Nathan was his relative and that he received the call On 5th August 2021.

5. **PW5 - Erick Kipkemoi**, an Mpesa shop operator in Kericho Town where he has three outlets, testified that the deceased was his employee since 2018 until his death. On 5th August 2021, he was informed that the Mpesa shop was closed and he was unable to reach the deceased. Upon checking the system, he discovered that Kshs. 123,000/- had been transferred to the deceased number and had not been withdrawn. He called Safaricom Customer Care and return the money. He informed the deceased's family and the police, who traced the deceased's phone to Masimba. While travelling to Masimba, they were redirected to Longisa Hospital, where they identified the deceased's body. The scene where the body was found was

beside the road. Under cross-examination, he stated that the transfer occurred at about 9:00 PM and that he could not tell who murdered the deceased.

6. **PW6- Sarah Alima Njoki**, a bar attendant at Simba Hotel aged 23 years, testified that on 4th August 2021 at about 9:00 PM, they closed the bar. The deceased called Hillary Bii asking if he can be allowed to get some beer to drink with his friends. The deceased arrived with two other people in the vehicle, one in the driver's seat and another person. She and Geoffrey joined Hillary, and Hillary gave out the bottles of beer. They were to be dropped at Ngozi area. When they reached Kipsigis Girls, the deceased said it was not safe to pass through the main road due to a police roadblock. They were dropped at Ngozi, herself, Geoffrey, and Hillary. The next day, Hillary told her that the deceased's phone was off. On 6th August, she found Hillary crying, saying his friend Alex had passed away. Under cross-examination, she stated that the journey from Simba Inn to Ngozi took them a short time and that she could not tell who kidnapped the deceased.

7. **PW7 - Geoffrey Kibet Cheruiyot** , a former waiter at Simba Inn Bar now working as a supervisor aged 28 years, testified that on 4th August 2021, the deceased came to the bar at around 9:00 PM with two other people, seated in the front passenger seat. He gave him two beers. They were dropped off at Ngozi, and the deceased left them. The following day, he heard that the deceased was no more. Under cross-examination, he stated that

he was born in 1994, worked as a counterman, and that Hillary told him that Alex had called him asking to be given 2 guinness. That there was curfew since it was covid time. 8. **PW8 - No. 124137 P.C. Kimutai Langat**, a police constable attached to Scenes of Crime, Kericho County, testified that he was before court to produce photographs taken by David Kipchumba, who is now deceased. He had with him 30 photographs marked as Exhibits A1 to A30, which he produced as exhibits showing the scene where the body was found. He was instructed by the Investigating Officer to certify the exhibits. Under cross-examination, the defence had no questions.

9. **PW9 - No. 93199 P.C. Dennis Akama**, a police constable attached to DCI Moyale and the Investigating Officer, testified that on 5th August 2021, he received a police report from Bomet that a body had been found. He visited the scene with other police officers and the deceased's relatives. The body had been disturbed by neighbours before police arrival and was taken for post-mortem. He stated that Nathan (PW3) had reported that two days prior to the disappearance, the deceased approached him plus four others requesting for guinness at Simba Inn Bar, which were served in the car. Nathan provided the registration number of the motor vehicle: KDC 661 H. Upon searching the NTSA database, the vehicle was registered under Caroline (PW1). When he called her, she informed him she was with the vehicle in Nakuru and was suspicious because the buyer was trying to sell it

at any price. She agreed to hold the vehicle until police arrived. They arrested the occupant, Christopher Kibet Terer (1st accused), who claimed he had lent the vehicle to Albert Kipkoech (3rd accused), a village mate from Olenguruone. When they visited Olenguruone, Albert escaped and ran into the forest but surrendered two days later at Keringet Police Station. Upon interrogation, Albert told them that on the material day, he was coming from a Sotik and spotted the motor vehicle. He was warned not to tell anyone what he had seen, and fearing for his life, he retreated to his village. Albert gave the names of the occupants of the motor vehicle as Donald Kipkoech (2nd accused), Christopher Kibet (1st accused), and Willy Kipkoech (4th accused). All were arrested and taken to court. PW9 testified that the following items were recovered from the motor vehicle: two pairs of sunglasses (Exh. 3), a pair of brown shoes (Exh. 4), shoe polish, shoe brusha , blue trousers jeans,a pair of shirt, weekly magazine,a black pair of socks, smart driving licence, an ID card belonging to Christopher Kibet, a KRA card belonging to Christopher Kibet, one Naivas card, ATM card, A punch of keys,DVD player,photo size passport, a copy of insurance for KDC 661 H, a car charger, a packet of miraa, a toothbrush, and two used Guinness bottles and inventory(Exh. 23). Under cross-examination, PW9 admitted that he was not an eye witness, that he did not conduct an identification parade because "the whole story was over the internet," and that none of the witnesses

identified any of the accused persons. He also admitted that the deceased's phone was not recovered from any accused and that he was not aware it was found in Kisii. He stated that according to his investigation, the four occupants were the killers and were the last people seen with the deceased while alive.

10. **PW10 - No. 99413 P.C. Daniel Kinuthia**, a police constable attached to DCI Operations, testified that on 5th August 2021 at about 8:00 AM, he was assigned a matter by the DCI Chepalungu and was informed of a body lying in Chepalungu Forest. He proceeded to the forest and found a dead body inside a culvert along the Chebunyo-Chepalungu road. They retrieved the body and took it to Chepalungu Hospital Mortuary, where it was booked as unidentified. Under cross-examination, he stated that the body was wearing underwear and a shirt but no trousers.

11. **PW11 - Dr. Weldon Kirui**, a medical doctor who performed the post-mortem at Longisa Hospital, testified that the body was well preserved, approximately five days old, with pale limbs and no significant weight loss. He observed multiple deep skin injuries on the neck, discoloration, a strangulation mark around the neck extending 10 cm, fresh blood oozing through the nose and mouth, pink discoloration on the chest, blood accumulation on the left upper limb, and ruptured large veins around the neck. He concluded that the cause of death was manual strangulation. He produced the post-mortem report as Exhibit 26. Under cross-examination, the defence had no questions.

12. The defence, through Mr. O. Langat, submitted that no prima facie case has been established against any of the accused persons. They argued that there were inconsistencies in the number of occupants in the vehicle, with PW1 stating the deceased was last seen with two unknown individuals while PW9's investigation claimed there were four occupants. They further submitted that the alleged statement by the 3rd accused against the 2nd accused was inadmissible as evidence of a co-accused against another co-accused, and if true, the 3rd accused should have been made a State witness. They contended that the deceased's phone was recovered in Kisii County but was not investigated, leaving the possibility that a killer could be out there while innocent persons stand trial. They emphasized that PW9 confirmed under cross-examination that none of the witnesses identified any of the four accused persons as the perpetrators, that his investigation did not reveal who killed the victim or what the motive was, and that while the 1st accused's vehicle was produced as an exhibit, nobody was able to tie the vehicle directly to the killing. The defence relied on the principles in ***Ramanlal Bhatt v. R [1957] EA 332*** and ***Ronald Nyaga Kiura v. Republic [2018] eKLR***, inviting the court to ask itself whether it would be prepared to convict if the accused elected to remain silent, and submitted that the answer is NO.

13. The test for a prima facie case is well settled in ***Ramanlal Bhatt v. R [1957] EA 332***, where the Court of Appeal held that

a prima facie case is established only if a reasonable tribunal, properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defence. Section 306 of the Criminal Procedure Code provides that if there is no evidence that the accused committed the offence, the court shall record a finding of not guilty and acquit them, but if there is evidence that they committed the offence, they shall be called upon to enter their defence.

14. Having carefully evaluated the totality of the evidence, I find that the prosecution has established a prima facie case against each of the four accused persons. The evidence adduced reveals that the deceased was last seen alive on the evening of 4th August 2021 in a Toyota Fielder registration number KDC 661 H, a vehicle owned by the 1st accused. The deceased was in the company of four occupants, and PW2, PW6, and PW7 were also in the vehicle and observed the deceased and occupants and were dropped off at Ngozi after the purchase of two bottles of Guinness beer. Subsequently, the deceased's body was discovered on 5th August 2021 inside a culvert along the Chebunyo-Chepalungu road, with PW10 confirming the body was recovered partially clothed, and PW11 establishing the cause of death as manual strangulation, with the post-mortem report produced as Exhibit 26.

15. Critically, PW9 (the Investigating Officer) testified that upon investigation, the 1st accused led them to the 3rd accused, who fled upon police approach but later surrendered and named all

four accused, including the 2nd and 4th accused, as the occupants of the vehicle on the material night. Further incriminating evidence includes the recovery of two medium Guinness bottles from the 1st accused's vehicle, directly corroborating PW2's testimony about handing over two bottles of Guinness to the vehicle's occupants on the night of the disappearance. Additionally, PW3 testified that she knew the 4th accused as an uncle to the deceased, having visited his home with the deceased in 2019, establishing a connection between the 4th accused and the deceased.

16. Regarding the 2nd accused, while the evidence against him is largely circumstantial, the Investigating Officer's sworn testimony was consistent and unshaken that his investigation revealed all four accused were the last people seen with the deceased while alive. The 3rd accused, upon surrender, specifically named the 2nd accused as an occupant of the vehicle. The 2nd accused was arrested and charged based on this investigative finding, and at this stage, the court is not required to determine the credibility or weight of that evidence, which are matters for full trial.

17. Concerning the defence submissions on inconsistencies, I find that the alleged discrepancy regarding the number of occupants arises from a misreading of the evidence. PW1 was the seller of the vehicle and was not an eye witness to the events of 4th August 2021. The witnesses who were actually in the vehicle, PW2, PW6, and PW7, consistently testified that there were four occupants

including the deceased. There is no material contradiction on this point.

18. Regarding the deceased's phone not being recovered from the accused, this does not exonerate them. The phone could have been disposed of after the crime, and the failure to recover it simply means that particular line of inquiry did not yield evidence against the accused. This is a matter for cross-examination and final submissions, not for acquittal at this stage.

19. Regarding the lack of direct identification by eye witnesses, the case against the accused is largely circumstantial. The Court of Appeal in ***Ahamad Abolfathi Mohammed & Another v. Republic [2018] eKLR*** reiterated that a conviction can be based on circumstantial evidence if the inculpatory facts are incompatible with the innocence of the accused. The circumstantial evidence linking all four accused to the crime, the vehicle, the Guinness bottles, the flight of the 3rd accused, the naming of occupants by the 3rd accused, and the relationship of the 4th accused to the deceased, is sufficient to meet the threshold for calling a defence.

20. Applying the **Ramanlal Bhatt** test, I ask myself: If these four accused persons were to remain silent and offer no defence, could a reasonable tribunal, properly directing its mind to the law and the evidence, convict them? The evidence establishes that the deceased was last seen alive in a vehicle owned by the 1st

accused; two Guinness bottles matching the description of bottles purchased by the deceased on the night of his disappearance were recovered from that vehicle; the 3rd accused fled upon police approach, suggesting a guilty conscience; the 4th accused was related to the deceased and was named as an occupant; the 2nd accused was consistently named by the investigating officer as one of the four occupants; the body of the deceased was found in a culvert with injuries consistent with strangulation; and the post-mortem report confirms the cause of death as manual strangulation. In my view, a reasonable tribunal could, on this evidence, convict all four accused if no explanation is offered.

21. After carefully evaluating the totality of the evidence and after giving due consideration to the defence, submissions, I find that the evidence adduced by the prosecution establishes a prima facie case against each of the four accused persons.

22. Accordingly, the quartet each has a case to answer and are hereby placed on their defence.

**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

Prosecutor – Kimaru

Accused – Present in Person

O. Langat for Accused