



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL CASE NO. 17 OF 2023

REPUBLIC..... PROSECUTION

VERSUS

**WILSON KIPCHUMBA CHEBII ALIAS KALIA.....1ST
ACCUSED**

**WESLEY YEGO KIMAIYO.....2ND
ACCUSED**

**DENIS KEMBOY ALIAS MAN.....3RD
ACCUSED**

JUDGMENT

1. The accused persons **WILSON KIPCHUMBA CHEBII ALIAS KALIA, WESLEY YEGO KIMAIYO** and **DENIS KEMBOY ALIAS MAN** were jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge were that on the 6th day of July 2023 at Tarren bridge within Kinyach location in Baringo county, murdered FRANKSON CHEBOR KAMAMA.
2. The accused persons denied the charge and the matter proceeded to full trial with prosecution calling 10 witnesses and upon close of prosecution case, the court found that

prima facie case was established to warrant accused persons be placed on their defence.

PROSECUTION'S CASE

3. PW1 Josphat Kiptui a cousin to the deceased FRANKSON CHEBOR KAMAMA testified that on 21st July 2023, together with Wilson Rongu, they identified the body of the deceased to the doctor for postmortem.
4. Pw2 Dr. Barmokon Amdany testified that on 21st July 2023, he conducted postmortem on the body of the deceased FRANKSON CHEBOR KAMAMA and concluded that the cause of death was massive haemorrhage (bleeding) secondary to gunshots of penetrating head injury. He produced postmortem report in court as exhibit.
5. Pw3 PC Patrick Kahumba who was attached to Kinyach police station testified that on 6th July 2023, he went Elkeyo Marakwet Aror shopping centre for personal engagement and at 7.30 p.m, they went back to Kinyach and that there were young men who wanted to join them cross Kinyach. They called for additional motor rider Richard who carried him and PC Kiprop. he said another motor bike was driven by Pius and the 3rd by Frank Chebor kamama the deceased herein. He said Pius and the deceased went ahead of them. On nearing the bridge, they heard gunshots.

6. Pw3 testified that at around 8 p.m they gunshots were directed towards where they were. He said they introduced themselves as police offers from Kinyach and that they did not have any weapons. And they were allowed to pass as they raised their hands. He said they were about 10 metres as they talked to them. After crossing the bridge, they found 2 motorbikes which had fallen down and the deceased herein was lying down bleeding from gunshot wound. They left him there and proceeded with their journey.

7. Pw4 No. 97423 PC David Matende who was based at DCI Marakwet West as investigator testified that on 14/7/2023, he was accompanied by police heads to look for Wilson Kipchumba Chebii the 1st accused herein who was police reservist. They found him at Arror Market with G3 rifle J71570 and 20 ammunition in it. They arrested him and took him to Kapsowar police station. They took him and handed him over with G3 rifle and 20 rounds of ammunition to Kapsowar police station for further investigations. He wrote inventory of the things he recovered from Accused 1. He identified the G3 rifle as the one before court with 20 ammunitions which were inside the magazine. He said they were removed and counted. He identified the suspect as Accused 1 herein.

8. He said they found Accused 1 at Aror Police station. Aror police station is in Aror trading centre. I did not accompany him to Baringo Officers from Baringo came for him. I handed over exhibits. The inventory is in the police file. If I see police file and will remember whom I handed over exhibits. I gave exhibits to investigator of the case.

9. Pw5 Frankline Simotwo testified that he is a boda boda rider and on 6/7/2023, he was in Aror market upto evening then left for his home at around 7:30 p.m. While on the way, he found 2 police officers from Kinyach police station Kiprop and Patrick. He carried them and, on the way, they heard gun shots about a kilometer away. They stopped for about 10 minutes then proceeded. After reached the bridge, they saw 2 motor bikes down and one person down. He said the person who lay dead was a boda boda rider. He said after 200 metres the attackers saw lights from motor bike and they started shooting at them. they fell with motor bike. They hid for about 5 minutes then proceeded when gunshots stopped. He said he sustained injury on the cheek near the mouth. They lay down and proceeded after 15 minutes. He said they did not see the people who shot at us.

10. Pw5 said they proceeded and on reaching the bridge, they saw 2 motor bikes on the bridge and one person lay down, we proceeded. The police officers flushed their torches to see the person who lay on the bridge was Chebor

Frankson Kamama. They proceeded to police station where they reported the incident and recorded statement. He was told to go to hospital and he went to Kuikui health centre. He said he did not identify the person who injured as it was dark and it was raining. He said Bartelel was injured on the hand.

11. On cross examination, he said he not know the intention of attackers and that it was dark and raining and was not able to identify any one.
12. Pw6 Markson Cheptorugun testified that on 6/7/2023 he had gone to herd goats in field near river Kerio and around 4 p.m., as he was returning goats home, he met the deceased herein Franson Chebor Kamama who told him to leave goats to go home and join him to go to Aror where they did shopping. At around 8 p.m they found people from his home area and they returned together using 4 motorbikes riders were Pius, Frankline, Frankson and Kirwa. He said at the bridge, Kirwa's motor bike went ahead of them. At the bridge they were shot and the first motor bike rolled and remained in the bridge. Their motor bike also fell and they all run for safety. He said the next day they learnt that Kamama remained at the bridge. He said they did not see the people shooting as it was dark. He said he riding in Frankson Kamama's motor bike and they were 2 in the motor bike.

13. On cross examination, he said he could not identify people involved in the ambush as it was dark.

14. PW6 Elija Kipsambu who is a herder at Kobot village Kinyach Sub-location testified that he knew Accused 1 and that he is called Kalya. He said he was informed by Abraham that a person was killed by people from Aror on 6/7/2023 at Teren bridge. He said he went to the scene where he met people but the body had been removed from the scene. He said the person killed was a son to his niece. He later recorded statement. He said he has lived in the area for 20 years and that there is no peace or security in the area. He said he only knows Accused 1 and does not know who killed the deceased. On cross examination, he said he does not know who killed the deceased.

15. PW8 no. 231710, Mr. Alex Chirchir Senior Superintendent of police who is a ballistic expert testified that on 24/7/2023, he received exhibits from one office no 58171 CPL Weldon Koech who was attached at dci Baringo north, the exhibits are as follows:-

1 one G3 ruffle s.no j701570 marked exhibit. a

2:20 rounds of ammunition marked exhibit 1 to a20

3: 4 Fired cartridge case marked exhibit B, D1, D2 and D3

4: one AK 47 assault ruffle with visible no 80*z0137

Marked exhibit. c.

16. He said the exhibits were accompanied by exhibit memo form. He carried out exam and his findings were:-

1. exhibit A is a G3 ruffle calibre 7.62Mm to have been discharged chamber to use records of ammunition of 7.62mm by 51mm exhibit. A is end surrounded with letters KE.KP KE stands for Kenya and KP stands for Kenya police.

2. Exhibit "C" is an AK 47 assault rifle its chamber is 7.62 by 39mm.

3. Exhibit.A1 to A 20 One 20 Rounds of ammunition in calibre 7.62mm by 51mm.from the 20 I picked 3 rounds randomly and test fired in Exhibit "A" since there were no Ammunitions for exhibit "C" and picked 3 from our laboratory and test fired with exhibit "c".

17. He said he recovered the test cartridges from each firearm. From the examination, he formed opinion that's exhibit "A" & C" are fire arms & A1 to A20 are ammunition as described under fire arm act.

18. On exhibit "B" the one fired cartridge case and is formally a component part of a round of ammunition with 7.62mm by 51mm.Also Exhibit "B" features 12 flute (like

tube). Chamber markings that are consistent with G3 ruffle discharge. The 12-flute chamber marking expelled it during firing and it acquired (chamber) the markings. it has 12 chamber markings that consistent with G3 rifle discharge.

19. On exhibit D1 to D3 are 3 fired cartridge case & each normally a component part of round of ammunition of calibre 7.62 by 39mm. He said he did comparative exam of the 3 D1, D2 & D3 against one and formed opinion that the 3 fired cartridge cases were fired in one fire arm and that there was sufficient matching in terms Ejector, Firing pin and Pitch face.
20. He said during firing, there is transfer of Firing of Markings to the cartridge cases & the principle in each fire arm as unique markings when all are transferred to cartridge cases. the 3 were fired in one fire arm.
21. He said from the comparative microbial examination of exhibit. B to B3, there were sufficient matching which made him form opinion that exhibit B was fired in exhibit A which is the G3 rifle 71570 exhibit D1 TO D3 were all fired in exhibit C which is AK47 assault rifle ruffle 80*Z0137. He prepared the report dated 24/7/2023, signed and produced as exhibit. He identified the firearm exhibit A (Marked MF1 2a) with the number of bold head being no 80*Z0137 (MF1 3).

22. He identified the spent cartridge from AK 47 were 3 from their lab.

exhibit B (marked exhibit 4) 7.62*51mm.

3 spent cartridges marked MF1 5(a-4). 7.62 x 39.

Court - Exhibit memo marked P exhibit. 6.

Court - (Ballistic report marked P exhibit-7.

23. He said they do not do Finger Exams as this will have gone through several hands.

24. PW9 Patrick Mutusia Matuku force number 97266 A GSU officer attached at Baringo Tiaty East in year 2023 testified that on 17/7/2023 they left in a group of 20 officers to Arror for an operation to arrest bandit suspects and on the 3rd day they arrested a person called Ten percent (10%). He said they were operating from Arror to Tot and there was a person killed on the road from Arror to Kinyach. He said they used NPRS and area chiefs to assist in arresting the person called Ten percent (10%) at Arror centre and took him to arror police station. They then went to look for the others. He said they went to a home of a person nick named Man but did not find him but found firearm AK 47. They took Accused 2 to Kapsowar police station, recorded statement and left Accused 2 there. They found AK 47 ruffle, one magazine and bow.

25. He identified AK47 were covered from the person nicknamed man. He said he did not go to the next operation. He identified the person also known as Ten Percent (10%) as accused 2 and said he only arrested Accused 2.
26. On cross examination by Mr Buluma for Accused 1, pw9 said he recorded statement after about one month and that he is a resident of Arror and he was doing operation while at Tot while being directed by NPR & Area chief who directed them to where the suspect was. He said they worked closely with chief, NPR and a senior officer called SP Sammy Nyongesa. He said they arrested Accused 2 from where he operated motorcycle taxi following information of area chief and NPR and that he had no independent evidence. He said they were not looking for a specific person; they were looking for bandits. He said he does not know Accused 1; that he only knows Accused 2 and he did not know his real name but only knew him by nickname 10% (ten percent).
27. On cross examination by Mr. Buluma, he said they arrested Accused 2 then they we were told of one called "Man". They were suspected cattle rustlers. They were led by the chief to home of the person called "man". They did not find anyone in the home but found firearm & magazines. He said "Man" has neighbors. There is settlement around him and that they were with the chief alone when they went to "Man's" home as NPR had remained and from the centre to man's home is about 3km. He said senior officer entered

the grass thatched house and came out with the firearm. It is a grass thatched house.

28. He said he was not present when man was arrested and that he has not met man. He said after recovering the firearm, they took Accused 2 to Kapsowar police station. That they were using a lorry and he sat behind the driver and the Firearm recovered was not used anywhere. He said the firearm did not have cartridges. That it had serial number but he could not recall it.
29. On re-examination he said they were arresting cattle rustlers and that it was triggered by the fact that a person had been killed at the bridge of Arror.
30. PW10 no 58171 CPL Weldon Koech who was sub county criminal investigating Officer Baringo north was the Investigating Officer in this case. He testified that in July 2023 together with CPL Ondege they were instructed to investigate an incident which had taken place at boundary between Arror Marakwet and Baringo North, where a person had been shot dead, by suspected bandits from Marakwet. They visited the scene and were able to recover 4 cartridges, one for G3 rifle and the 3 for AK 47 rifle. They took possession of the cartridge and kept as exhibit. He said they were not able to make an arrest at that time. After sometime Accused 1 was arrested and taken to Kapsowar

police station and was later taken to Kabarnet and arraigned before court. He said Accused 1 was in possession of G3 rifle being an NPR which they took as exhibit. Later Accused 2 was arrested following intelligence and he took police to Accused 3's house where AK47 rifle was recovered. He took exhibit to ballistic expert for examination together with recovered cartridge. They later charged the Accused 1 & Accused 2. Later they received ballistic report. Accused 3 was arrested on a later date and charged. They had also recovered a mobile phone which we took for examination to date. He said they were many officers at the scene of crime because the area was hostile, there were officers from GSU, AP, and general police and KDF. They went to the scene of crime and the cartridges used and they recovered 4 cartridges in different directions. He took the cartridges which he identified in court. He also identified AK47 rifle which was recovered from Accused 3's house (MFI 3 identified) and G3 recovered from Accused 1 who had been given the firearm as NPR.

31. He said G3 had 20 rounds of ammunitions and the Magazine from AK47 was empty. He showed court 17 live ammunition and 3 spent cartridges. He said Multi agency group went to Accused 1's home then he was summoned to Arrow shopping following intelligence. He was suspected to be one of those who shot deceased.

32. He said A3 was also arrested by multi agency group the AK 47 belongs to him. He said Accused 3 was known for attacking people from Baringo side and at some point, he was shot and taken to Iten Hospital but he disappeared from hospital. We recovered 2 phones from Accused and Accused 2. He sent the phones for examination on 23/7/2023 through exhibit memo. He said they have not received any report from Safaricom through police liaison person as they were told they were not ready. He said G3 rifle belonged to Accused 1 as he was issued with it for security as NPR it's the same one used to fire one cartridge recovered from the scene and AK47 belonged to A3. He said upon examination it was recovered that the 3-cartridge recovered from the scene were fired from the AK 47 firearm.
33. If we get report for mobile phone we will use as exhibits. They are still with Safaricom. I will return the phones and if I get another. I am not sure if motorbike has been returned to Accused. I have no problem with having motorbike returned to Accused 2. It was not part of the exhibit.
34. I visited the scene a day after the incident. was 7/7/2023. The visit was from our office. Multi agency were operating from the other side, Aror Marakwet. I was not part of constituted multi agency team from Elgeyo Marakwet the arrest was done by them.

35. The intelligence led us to arrest the suspects. The date on indicated for records my statements is 28/3/2024. This is an error. I cannot see my statement in the original file I had written. I went to the scene on 12/7/2023 not 7/7/2023. I was instructed to investigate the murder which had taken place near Nginyach police but I didn't go immediately because of challenges of transport. I went on 12/7/2023. The matter was received from Nginyach police station immediately after the incident.

36. Cross examination by Mr. Buluma for accused 1 and holding brief for Mr. Chepkilot for Accused 2, Pw2 said the ground was very hostile and that they visited the scene between 12th and 18th July 2023. the date on my statements was a typing error and that they recovered exhibits in the course of investigations. He said in his statement he may not have talked about recovery of cartridge but they recovered them. He said they found exhibits on 14/7/2023 at 1600 hours and it is the same time they were re-arresting Accused1 from multi-agency police officers. That's is the time they also picked the exhibits. He said they collected the exhibits G3 and 20 rounds of ammunitions from Kapsowar police station. He said they recovered the 2 spent cartridges on 12/7/2023 when they visited the scene. The exhibits we recovered on 14/7/2023 is G3 rifle and 20 live round ammunitions.

37. He said Accused I confirmed that the G3 rifle and 20 rounds were given to him which they found intact and that he did not confirm from the records how many ammunitions were given to Accused I.
38. Pw10 confirmed from NPR's that A1 was given 20 ammunitions and that he was given one magazine which has capacity of 20 rounds of ammunitions. He said there is arms movement record but it was not necessary to look at the record because he had confirmed from the Chief that they are given each one magazine which has 20 rounds of live ammunitions. He also did not visit Accused 1's house. He said he did not have evidence connecting Accused 2 to the murder. He led police to recovery of 2nd firearm from Accused 3.
39. On cross examination by Mr. Chebii for Accused 3, Pw10 said they visited the scene later, after hostility had gone down but did not give a specific date. he said they went to the scene and recovered exhibits between 12th and 18th July 2023. He said he is the one who recovered the 4 cartridges together with multi-agency. He recovered one cartridge for G3 and the other spent. Cartridge (3) were recovered by multi agency officer and they gave him at the scene. He said they were recovered the same day.

40. The exhibit memo (exhibit 6) exhibits were received on 24/7/2023. They were marked on the same day and results given the same day. The spent cartridge was recovered from Baringo and Baringo County. The G3 spent ruffle was recovered from Baringo side the often were recovered from Marakwet. The ballistic expert confirmed the spent cartridge were recovered from the riffles. Ballistic exam is normally done very fast to reduce expenses.
41. He said because of challenge of transport they used officers from the other side to give information and that they did not visit Accused 3's house. He said A3 was not in the home where the AK47 rifle was recovered.
42. On reexamination, he said in the exhibit memo they do not indicate date and where each exhibit was recovered and that he is not custodian of arms movement. He further stated that from intelligence from ground, accused 2 was working with Accused 1 and Accused 3. That A2 was assisting Accused 1 and Accused 3 to commit robbery and murder.

DEFENCE CASE

43. Accused 1 Wilson Kipchumba Chebii testified that he is a resident of Arror sub location in Marakwet county; that he is a farmer and businessman and also serve as NPR for Arror

sub-location as in charge of Sub-Location. He said on 6/7/2023 from 6.00am, he was working in a hotel which he operated at Arror. At 8 P.M while in the hotel he heard some sound near river Kerio. He said he switched off TV and went outside to listen but did not hear any voice. He went back to the hotel and thereafter went to meet from ARROR police post. The OCS asked him to inform NPR Colleague. At around 8 p.m./9 p.m. OCS went to the hotel and informed him that something had happened at the bridge and he had spoken with OCS Kinyach and was waiting for the report from OCS Kinyach. He said OCS informed him they did not have enough police and they were to wait for the next day as it was late. He was asked to inform NPR under him that they would go the next day. The next day, he was informed by OCS Kinyach that the area was not good and they would be informed when to go there.

44. Accused 1 said as NPR, they are armed and that he was issued with a G3 rifle which he could not recall the serial number and that it had 20 ammunitions. He said they were all 40 ammunitions and all rifles were G3 issued at the police station by OCS. He was he was NPR supervisor and they would go for review for check if the firearm and ammunition were okay. He said on 13/7/2023 OCS informed him that all in charge were required at Kapsowar but in the evening he changed and said all Government leaders were to come to Arror the next day. He said he went to Arror police station

and all in charge from the 8 sublocations were there to wait for the leaders who arrived at 2.00 pm. He said they were 8 in charge with one overall making 9. He said he was told he was required to record something at Kapsowar and was asked to surrender his gun and they checked it together with ammunition. He said at Kapsowar he was informed that DCI Baringo wanted him and a vehicle took him there at 7p.m the same day 14/6/2023. On 15th June 2023 he was taken to the office and asked me to open his 2 phones and was asked me about incident at night and if he gave out his firearm. He said he was told of the incident which occurred at night and that people were saying he was there and they were taking the phone and firearm to see if there is any connection.

45. He was later charged for the incident of 6/7/2023. He said he saw firearm produced in court which was G3 (exhibit 6). He said on 14/7/2023 he was at Arror police station and statement of Weldon Koech. PW10 statements (DMFI 1) was recovered on 28/3/2024 after he had been charged as he was charged in July 2023. He said the officer did not do proper investigation and urged this court to look at the statement which was marked DExh.1. He said he does not know Accused 2 and Accused 3 and that he did not collude with Accused 2 & Accused 3 to kill the deceased.

46. Accused 1 said he has been NPR since the year 2017. He said on the material day, he was in his hotel and that he

did not hear gunshots but he heard from people there were gun shots. He confirmed that as NPR he was given G3 rifle serial numbers J71570 which he had at the time he was arrested and was also given 40 ammunitions but he had 20 ammunitions and he was not required to give out ammunitions and he had not booked any report of loss of ammunitions at the time he was arrested on 14/7/2023. He said he had not used any ammunitions and 20 ammunitions were in the firearm and the other 20 were in the house and he informed in charge NPR that and he went to collect them from his house. He said they were in a magazine.

47. The Accused 2 Wesley Yegon Kimayo Alias Arap 10% testified that he is a son of 10%. He said he resides at Chesuman Location, Chepkum Sub-location on Elgeyo Marakwet county and that he was working with Watu Credit Motor rider and farming. He denied killing the deceased. He said he does not know the deceased Frank Chebor Kamama and that he first heard of the name in July. He said on 1/7/2023 he had planted Sorghum and Elephant went and destroyed the sorghum on 21/7/2023. He went to police station to report. on 2/7/2025 evening KWS went to chase Elephants upto 5/7/2023. He said he remained in the farm to guard the farm. On 6/7/2023 he was still in the farm guiding birds up to evening. On 17/7/2023 he did not go to the farm. He went to the centre and stayed there up to 11p.m. While on Facebook while lying on my motorbike, his phone was

taken from behind on checking it was a GSU officer Abraham, whom he knew. He was handcuffed and told to join him to police station. They were many.

48. He was taken to Aror police station and was handcuffed at police station. They went to his home as Abraham knew his home as he is his neighbor. After 3 hours they returned and showed him Arrows 2 knives and a gun and said they got the gun from his brother. He said at the border of Marakwet East and West a person in a motorbike was shot. He said they met 2 people and shot them. They found another in police uniform and had NPR ID. He was beaten. He said they reached Kapsowar police station at 11a.m and was told to go and sleep in cell for Kapsowar. In the morning DCI Kabarnet had arrived and he was taken to Kabarnet station and placed in cell. He said he was told to give out my phones and open the phone with pattern and placed in cell. At midnight he was taken to DCI and finger prints were taken. He was asked if he knew Accused 1. He said he did not know Accused 1 & Accused 3.

49. He said Accused 3 is called man and that he is not related him and he did not know him before he was arrested. He denied taking police Weldon Koech to where man was & gun found. He said he was not interrogated. That Finger prints were taken but his statement was not taken. He denied having Accused 1 & Accused 3's numbers in his

phone. He said his phone was not recovered where the murder occurred. He said Nginyach is far from where he lived and denied being involved in the murder.

50. On cross examination by Mr. Chebii for Accused 3, Accused 3 said he did not take police to A3's home and that he does not he had not known A3. He said he was at police station when police went to search his brother Alias man and said police used the gun produced in court to shoot the motor cyclist. He said police were not leaving cartridge they were collected. He said A3 found him in Eldoret prison.

51. On cross examination Accused 2 said his home is 15km from Aror centre and on the date he was arrested, he had gone to Aror to do boda boda (Motorcycle) work. He said he reported destructions of crop by elephant on 2/7/2023 to police but he did not have OB in court. He said he was with many people at Aror centre at 11 a.m. but he could not recall the people he was with but it was only him who was arrested. He denied taking police to Accused 3's house. He said he was at police station when police went for search. He said he saw police come back with a gun and said they got it from his brother but he told them he did not have a brother there. He said they took 3 hours before coming back to the vehicle and that he did not know the name of the police officer who shot the motor rider. He said he came to know Accused 1 at the police station.

52. Accused 3 Dennis Kipyegon testified that he was living with his uncle in Marakwet east Kaben village where he used to herd goats for his grandmother from the year 2023 January after doing KCSE in December 2022. He denied the charge and said he was arrested for offence of robbery on 10/10/2023 and he had been in remand in Eldoret for 8 months. He said he had given someone money and when he went for his money, he was given motorbike, and then he reported that he stole it but later withdrew the case on 7/9/2024. He said he was in remand for the period he was charged for his offence and no one said he was seen in terrain river Aror. He said he was in Aror from 2006 to 2010 then he went to his uncle. He said his mother had been married at Aror but she separated with his father in the year 2010 and Accused 3 went with his mother to Kaben Marakwet East when he was 4 years old. He denied having gone to Aror market nor having passed terrain bridge. He said he did not have a home at Aror and that he was living with his uncle at Kaben a distance of 100km from Aror. He denied recording a statement while in prison. He denied knowing Accused 2. He said the name Man is his father's name and he is Man's junior. He said a gun could not be found at his home and I didn't have a home. He said he was 18 years old when he was charged with the offence of robbery and was 19 years old when he was charged in this murder case.

53. He said when he was arrested in prison, it was not explained to him why I was being arrested and was not asked to record what happened on 6/7/2023. He denied that he escaped or was rescued from Iten hospital. He said on 6/7/2023, he was in his uncle's home at Kaben. He said his father married another wife and that he was the first born and have a younger brother from his mother. He said his two witnesses was to attend court but there was operation at Marakwet East and he did not know how long the operation would take and he decided to close his case.
54. On cross examination by Mr. Chepkilot for Accused 2, he said he does not know A2 and he has no relationship with him. He said he had not met him before he was arrested.
55. On cross examination by prosecutor, he said he was arrested for robbery offence and that he gave the complainant money in Kaben and that he took plea on 16/10/2023 in Eldoret and he was discharged from hospital on 6/6/2023. He said he shot while herding by people who took goats 5/6/2023 and he was taken to Iten County Referral Hospital. He said he was discharged after about 3 to 4 months and that he did not escape from hospital but he did not produce discharge summary. He said he does not know A3 and that he saw him in prison. He said Charges of murder were read to him in May 2024. That he was arrested

at Kaben in respect to motor bike and he had not come to Arror where his mother lives.

56. On reexamination by Mr. Chebii, accused 3 said he was discharged from hospital after 3 weeks and that he had not been charged for escape from lawful custody and that he was arrested at Karena centre over motor bike which is not related to this case. He said he was charged for the present offence while in prison having been in remand for 8 months.

ANALYSIS AND DETERMINATION

57. Having considered the evidence on record, the submissions by the prosecution and the defence, and the applicable law, the court is called upon to determine whether the prosecution proved the charge of murder against each of the accused persons beyond reasonable doubt.

58. Under section 203 of the Penal Code, the prosecution must establish the following elements:

- i. The fact and cause of death of the deceased;
- ii. That the death was caused by an unlawful act or omission;
- iii. That the unlawful act or omission was committed by the accused person(s);
- iv. That the accused acted with malice aforethought as defined under section 206 of the Penal Code.

59. I shall address these elements sequentially, bearing in mind that where multiple accused persons are jointly charged, the evidence against each must be independently evaluated

(i) Whether the Death of the Deceased Was Proved

60. The death of the deceased, **Frankson Chebor Kamama**, was not contested. PW1 identified the body for purposes of post-mortem examination. PW2, Dr. Barmokon Amdany, conducted the post-mortem on 21st July 2023 and concluded that the cause of death was massive haemorrhage secondary to gunshot wounds resulting in penetrating head injury.

61. The post-mortem report was produced in evidence and was not challenged. The court is satisfied that both the fact and cause of death were proved beyond reasonable doubt.

(ii) Whether the Death Was Unlawfully Caused and Whether the Accused Persons Were Responsible

62. The evidence of PW3, PW5, and PW6 consistently testified that on the night of 6th July 2023, motorbike riders crossing Tarren Bridge were ambushed and fired upon using firearms. The deceased was fatally shot, while others narrowly escaped with injuries.

63. There was no suggestion that the shooting was accidental, justified, or legally excusable. The court therefore

finds that the death of the deceased was caused by an unlawful act.

64. There was no direct eyewitness identification of the assailants. The prosecution case therefore rests on circumstantial and forensic evidence, particularly ballistic evidence. I will consider the culpability of each accused separately.

Accused 1 - Wilson Kipchumba Chebii alias Kalia

65. Accused 1 was a National Police Reservist lawfully issued with a G3 rifle, serial number J71570, and ammunition. PW8, a senior ballistic expert, testified that one spent cartridge recovered from the scene was conclusively fired from this specific rifle.

66. The ballistic evidence was scientific, objective, and unchallenged. Accused 1 admitted possession of the firearm and ammunition but denied being at the scene or firing the weapon.

67. It is not disputed that accused 1 did not report any loss, theft, or unauthorized use of the firearm or ammunition. He offered no plausible explanation as to how a cartridge fired from his rifle was recovered at the murder scene.

68. Once the prosecution established that a cartridge fired from Accused 1's rifle was recovered at the scene of the

fatal shooting, an evidential burden arose requiring him to offer a reasonable explanation. He failed to discharge that burden.

69. From the foregoing, I am satisfied that Accused 1 participated in the unlawful shooting that resulted in the death of the deceased.

Accused 3 - Denis Kemboy alias Man

70. Ballistic evidence further established that three spent cartridges recovered from the scene were fired from an AK-47 rifle, serial number 80*Z0137.

71. PW9 and PW10 testified that this firearm was recovered during a security operation from premises associated with Accused 3. PW8 confirmed through comparative microscopic examination that the three cartridges were fired from that specific firearm.

72. Accused 3 denied ownership of the firearm and denied being present at the scene. However, he did not provide any credible explanation as to how a firearm recovered from premises linked to him was used in the fatal ambush. His alibi was unsupported by independent or corroborative evidence.

73. From the foregoing, I find that the circumstantial and ballistic evidence forms an unbroken chain pointing irresistibly to Accused 3 as one of the perpetrators of the armed ambush that led to the death of the deceased.

Accused 2 - Wesley Yego Kimaiyo alias "10%"

74. The case against Accused 2 stands on a different footing. There was no ballistic evidence linking him to any firearm used at the scene, nor evidence that he was in possession of any firearm at the material time.

75. There was also no eyewitness or forensic evidence placing Accused 2 at Tarren Bridge during the shooting. PW10 candidly admitted in cross-examination that he had no direct evidence connecting Accused 2 to the murder, other than intelligence information.

76. It is trite law that suspicion, however strong, cannot found a conviction. From the foregoing I find that the prosecution failed to prove beyond reasonable doubt that Accused 2 participated in the unlawful killing of the deceased.

(iii) Whether Malice Aforethought Was Proved

77. Malice aforethought may be inferred from the circumstances set out under section 206 of the Penal Code,

including the nature of the weapon used, the manner of its use, and the part of the body targeted.

78. In the present case, the assailants used high-calibre firearms (a G3 rifle and an AK-47) during a deliberate night ambush. The deceased sustained fatal gunshot wounds to the head.

79. The deliberate use of lethal weapons in these circumstances irresistibly leads to the inference that the assailants intended to cause death or grievous harm. I am therefore satisfied that malice aforethought was proved beyond reasonable as against Accused 1 and Accused 3.

80. **FINAL ORDERS:-**

- a) Accused 2 is hereby acquitted of the charge of murder under section 215 of the criminal procedure code.
- b) Accused 1 and 3 are hereby convicted of the charge of murder contrary to section 203 as read with section 204 of the penal code.
- c) Sentencing after sentence hearing.

Dated and signed at **Nairobi** this 12th day of March 2026.



.....

R NGETICH

JUDGE

Dated, Countersigned and delivered at **Eldoret** this 12th day of March 2026.

.....

J R WANANDA

JUDGE

In the presence of:

Court Assistant - Brian Kimati

State Counsel - Ms Kosgey

Accused - All Present virtually

Ms Shejero holding brief for Buluma for 1st Accused.

Ms Kosgei for the State.

Chebii for 3rd Accused.