



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDAMA RAVINE (SUB-REGISTRY)

CRIMINAL CASE NO. E033 OF 2023

**REPUBLIC.....
PROSECUTION**

VERSUS

**OLIVIA CHEPCHIRCHIR KIRUI.....
1ST ACCUSED**

**JONATHAN KIPKEMBOI.....2ND
ACCUSED**

JUDGMENT

1. The Accused1 **OLIVIA CHEPCHIRCHIR KIRUI** and Accused 2 **JONATHAN KIPKEMBOI** with another were jointly charged with two counts of 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 12th day of July 2022 at Chemususu forest in Koibatek subcounty within Baringo county, they jointly murdered ivy Jerop Kemboi. In count 2, they were jointly charged that they murdered Shanice Jebet Kemboi.

Prosecution's Case

2. PW1 Dr. Wangari Wambui a pathologist testified that she conducted postmortem on 15th July 2022 on the bodies of the two minors herein at Baringo county referral hospital and formed opinion that Shanice Jebet Kemboi aged 4 years died as a result of neck compression due to blunt force trauma consistent with strangulation by another person and ivy Jerop Kemboi aged 7 years died as a result of drowning following neck compression by manual strangulation. She produced postmortem reports in respect to the two minors.

3. Pw2 Nickson Kipchumba Kenduiywa who is the Accused 2's father testified that on 8th July 2022, he was at home when a motor bike carrying the two minors herein arrived and the motor rider one Kipkemei informed that the children's mother gave him the children to bring to their father. He said the children's parents had separated but it was school half term and were coming to visit their father. He said the motor rider went to Sach 4 centre to look for the father and inform him that he had taken the children home. Pw2 said the children played up to evening at his place and went to their home and their stepmother Olivia who is the 1st accused herein was present. He said Accused1 chased the children away and they went to pw2's house crying. He said his daughter Monica returned the children to their father's house. She said Accused told pw2's daughter that she did not want people's children. She said Accused 1 took the

children to their mother's Aunt the next day but after eating, the children returned on their own and went to Sach 4 centre where they found their father who returned them home. He said he went to work and when he returned on 11th July 2022, he did not find the children. He later learnt from his daughter Monica that there are people searching for the children and on 14.7.2022, he received a call that the children had been found. He went home and found bodies of the children.

4. Pw2 testified that together with the father of the children, he identified the bodies of the children for postmortem. He said they learnt that the children were strangled but he did not know who strangled the children. He said on 13th July 2022, Accused1 had gone to the chief to report that she had been strangled and the chief asked him to report to police. Pw2 said Accused 2 Jonathan is his son and he is the father of the children and that Accused2 had married Accused1 after the children mother left. He said Accused 3 whose case was terminated is also his son. He said Accused 2 had lived with Accused 1 for two years but Accused 1 had no children with Accused 2.

5. Pw3 Mathew Keses who is a cousin to pw2 testified that on 12.7.2022, he met the two children and that the children asked for their father Accused 2. He said that he had not

seen accused 2. He said Accused arrived shortly thereafter appearing unhappy. He said Accused1 arrived, they all ate and Accused1 left with the children while Accused 2 remained. He said Accused 2 later went for milk at 9.30 p.m. and informed him that he did not find the children in the house. He said the next day, he learnt that the children were missing and a big group of people were searching them. He said the children were found at Chemususu dam on 14th July 2022. He said one child was in the dam and the other in the bush.

6. Pw4 no.229900 CPL Faith Wafula testified that on 13.7.2022, she was instructed by OCS to visit the scene of crime. She testified that Accused 1 informed her that on 12.7.2022 when she arrived home from Sach 4 Centre, she was confronted by a person who injected her and she lost consciousness shortly thereafter and regained 11 p.m in a maize plantation and she proceeded home and did not find the children. She said Accused 1 took them to a maize plantation but they did not see a sign of a person having laid there. they further interrogated Accused 1 at police station and that is when she told them she had taken the children to Langas Forest on 12.7.2022 at 8 p.m and left them there. They went to the forest but did not find the children and ongoing back to the station, they interrogated Accused 1 further and she admitted that she had killed the children in

the forest and threw them to Chemususu dam. She sought 7 days from court to do further investigations and Accused 1 led them to Chemususu dam and she showed them where the bodies were and the children's mother identified the bodies together with two jackets found at the scene.

7. Pw5 on.233027 CIP Daniel Kadel recorded confession from Accused 1 on 15.7.2022 upon explaining confession rules to Accused 1. He said Accused 1 opted to have her parents Richard and Alice Kirui present when she recorded her confession. He said he read cautionary statement to her before recording confession and thereafter prepared a certificate. In the confession, she admitted killing the two children in company of her husband Accused 2 at Chemususu dam by strangling and hid their lifeless bodies in a thicket near Chemususu dam and thereafter cooked up a story to exonerate themselves. Pw5 produced the confession and certificate in court as exhibit.
8. Pw6 Mercy Cheruto Tongoch who is the mother to the two children herein testified she was living with the children and when schools closed, she took the children to Accused 2 who was their father on 9.7. 2022. She said she took the children up to Eldama Ravine and asked a motor Rider to take them to Accused 2's home. She said on 11.7.2022, Accused 2 sent her a text message telling her that he was regretting that

the children were taken to him as they were being mistreated by Accused1. she later learnt that the children were missing, she said she accompanied police to Chemususu dam where the bodies of the children were recovered.

9. Pw7 a government chemist testified that on 20.2.2025 he carried on DNA analysis on 10 items presented to him by investigating officer and upon examination, he found that DNA profiles generated from the items were partial and inconclusive. On cross examination by Ms. Kusolo for Accused 1 he explained that it means that in all the tested markers, the DNA profile was incomplete which mean you either include or exclude an individual; he further explained that for inconclusive DNA profile, you cannot assign it to any person. On further cross examination by Mr. Mbeche for Accused 2, he said the sample he examined di not match any DNA profiles.
10. Pw8 no.70911 PC Stanley Kilimo testified that on 14.7.2022 testified that Accused1 confessed that she conspired with Accused2 to murder the two children herein and led them to where they recovered the bodies. He produced the 2 jackets, rope with hanging noose they recovered at the scene. He confirmed that Accused 1

recorded confession on 15.7.2022 and that postmortem confirmed that the two children died from strangulation.

Defence

11. Accused 1 testified on oath. She stated that she is 25 years old and that she was 22 years old at the time she was arrested. She said she explained what happened at the police station and thereafter, she was given papers to sign though what was recorded was not read out to her. She said none of her belongings were recovered from the scene. She admitted that she was living with A2 and one of her dresses found in his house was blood stained. She said she had miscarried on 10.9.2021 and the blood in her cloth was for miscarriage. She admitted that the signature in the confession was hers. She also admitted that her parents signed the confession. She however said that she has realized what she said and what was recorded were different. She said she was not living peacefully with Accused 1 as he used to beat her and denied the charges against her.

12. Accused 2 Jonathan Kipkemboi Keses testified that Accused1 was his wife and the two deceased children herein are his children and the mother of the two children is pw6 Mercy Cheruro whom he had disagreed with. He said when pw6 left, the children stayed with his mother and pw6 later

took the children from his mother. He admitted that as at 10.7.2022, he had lived with Accused 1 for 2 years. He said on 12.7.2022 Accused 1 did not cook as she claimed to be sick. He was with the children and accused to Sach 4 to eat in a hotel. He said on 11.7.2022 a plilingor to look for the children but did not find them. He said Accused 1 went with the children home and when he went up at 6 p.m, he found the children playing then he went back to the centre and when he returned home at 8 p.m, he did not find anyone. He said he called accused 1 but she could not be reached. He went to his sister and when he returned home, he found Accused 1 sleeping in the bedroom. He said he asked her where the children were and she responded that he should not ask her as she was also arriving like him from Sach 4 Centre. He said Accused told him that as she arrived home, someone slapped and pricked her with a needle on the shoulder. He said he went to call a neighbor Duncan Kibiegon and informed him he did not find the children and that Accused had informed him that someone slapped and pricked her and she found herself in a maize plantation. He said he also woke one job and told him what had happened and also woke his brother. He said they continued searching the children and he was later arrested by police on 14.7.2022. He said Accused 1 went with villages from police station and they returned with sweaters for the children and he learnt that the children were found in the dam.

13. On cross examination Accused said pw6 initially left the children with him but when he remarried, she went for the children and that he would visit the children and that in July 2022, pw6 took the children to him. He denied having disagreed with Accused 1 on 11.7. 2022. He said Accused 1 was taking care of the children and when he returned home on 12.7 .202 at 8.30 p.m, he did not find anyone in the house and he looked for them up to midnight.
14. On cross examination by Ms. Omari for the state, accused 1 and pw6 were not in good terms and that they had attempted to fight. He further said he does not know who killed his children and that his Aunt told him the children were found in a dam.
15. On reexamination by Mr. Mbeche, Accused 2 said Accused 1 and pw6 fought in the year 2021 and clothes were burnt. He said he is pained by the death of his children and he does not know how they died.
16. Accused 2 availed 2 witnesses. Dw3 Mark Kipsang Kiptoo who is a neighbor to Accused 2's sister testified that at 10p.m he Met Accused 2 at Sach 4 center and they walked together as he to his sister to look for his wife and children. He said they parted ways near Accused 2 sister's home.

17. DW4 Job Kipngetich a brother to Accused 2 testified that he is among the people who assisted Accused 2 look for his children.
18. Upon close of hearing, the prosecution opted not to file written submissions. Written submissions were filed by the 2nd accused.

SUBMISSIONS BY ACCUSED 2

19. Accused 2 denied involvement in the murder of his two children. He testified that on the material day he left the children with the 1st accused when he went to Sach 4 Centre and later returned to find both the children and the 1st accused missing. He stated that upon the 1st accused's return, she informed him that she had been attacked and rendered unconscious. He maintained that he participated in the search for the children together with neighbours and relatives.
20. Accused 2 submitted that there was no direct or circumstantial evidence placing him at Chemususu Forest or the dam where the bodies of the two minors were recovered. He contended that the prosecution case against him was

solely anchored on the confession of the 1st accused, which he argued was inadmissible against him. He further relied on the inconclusive DNA evidence and the absence of any forensic or physical evidence linking him to the commission of the offence. He urged the court to find that the prosecution had failed to discharge its burden of proof beyond reasonable doubt as against him.

ANALYSIS AND DETERMINATION

21. I have carefully considered the evidence by the prosecution, defence, the submissions by the 2nd Accused and the applicable law and wish to consider the following issues:-

- i. Whether the deaths of Ivy Jerop Kemboi and Shanice Jebet Kemboi were proved
- ii. Whether the deaths were unlawfully caused.
- iii. Whether the accused persons, either jointly or individually, caused the deaths.
- iv. Whether malice aforethought was proved.

(i) Proof of Death

22. The death of the two minors is not in dispute. PW1, a pathologist, conducted post-mortem examinations on both bodies and produced the post-mortem reports. The cause of death of Shanice Jebet Kemboi, aged four years, was neck compression due to blunt force trauma consistent with

strangulation. The cause of death of Ivy Jerop Kemboi, aged seven years, was drowning following neck compression by manual strangulation. The bodies were identified by PW2 and the children's mother, PW6. The court is satisfied that the prosecution proved the fact and cause of death beyond reasonable doubt.

(ii) Whether the Deaths Were Unlawful

21. There is no evidence suggesting that the deaths of the two children were accidental, justified, or excusable in law. Both children died as a result of deliberate neck compression. The defence did not advance any lawful justification for the deaths. The court therefore finds that the deaths were unlawful.

(iii) Whether the Accused Persons Caused the Deaths

22. The prosecution case against the accused persons is largely circumstantial, buttressed by the confession recorded from the 1st accused. The law is settled that circumstantial evidence can found a conviction if it irresistibly points to the accused and excludes any other reasonable hypothesis.

23. The evidence of PW2, PW3, PW6 and PW8 placed the two deceased children in the custody and care of the accused persons shortly before they went missing. PW2 testified that the children were chased away by the 1st

accused and later returned to the accused persons' home. PW3 last saw the children leaving with the 1st accused on the evening of 12th July 2022. PW6 confirmed that the children were delivered to the 2nd accused during the school holiday and later received a message from him expressing concern that the children were being mistreated.

24. The conduct of the 1st accused after the children disappeared was telling. PW4 and PW8 testified that she gave inconsistent accounts, initially claiming she had been attacked and lost consciousness, later stating that she had taken the children to a forest and left them there. Eventually, she led police officers to Chemususu Dam where the bodies were recovered. This conduct is incompatible with her innocence.

25. The confession recorded by PW5 from the 1st accused is significant from evidence adduced, the confession was recorded in compliance with the law. The 1st accused admitted the signature on the confession and confirmed that her parents were present during its recording. The confession was corroborated by independent evidence, including the recovery of the bodies at the location she led police to and further, the medical confirmed death by strangulation. Although the DNA evidence was inconclusive, it does not weaken the prosecution case. DNA evidence is not mandatory in proving murder where there is other

credible evidence linking the accused to the offence. From the foregoing, the prosecution proved beyond reasonable doubt the 1st accused caused the death of the two minors herein.

26. In respect to 2nd accused who is the father of the deceased children and was living with the 1st accused at the material time, there is no direct evidence placing him at the scene where the children were killed.

27. The principal evidence implicating the 2nd accused is the confession recorded by the 1st accused. In law, a confession is only admissible against its maker. without independent corroboration, confession cannot form the basis of a conviction against a co-accused. The 2nd accused did not confess, and no cautionary statement was recorded from him.

28. The circumstantial evidence relied upon by the prosecution, including the disappearance of the children while under the general custody of the accused persons and the suspicious conduct surrounding the incident, raises suspicion. However, suspicion, however strong, cannot take the place of proof beyond reasonable doubt.

29. Further, DNA evidence was inconclusive and did not link the 2nd accused to the offence. No forensic, physical, or

eyewitness evidence was adduced to demonstrate that the 2nd accused participated in the killing or shared a common intention with the 1st accused.

30. From the foregoing, I find that the prosecution failed to prove beyond reasonable doubt that the 2nd accused, Jonathan Kipkemboi Keses, caused or participated in the unlawful killing of the deceased children.

(iv) Whether Malice Aforethought Was Proved

29. Malice aforethought may be inferred from the nature of the injuries inflicted, the vulnerability of the victims, and the conduct of the accused before and after the offence. The victims herein were minors aged four and seven years. They were strangled, and their bodies disposed of in a dam and nearby thicket. There is no doubt that the manner of killing and disposal thereafter, clearly demonstrates an intention to cause death.

30. The deliberate concealment of the bodies and the false reports made by the 1st accused further demonstrate consciousness of guilt. The court is satisfied that malice aforethought, as defined under section 206 of the Penal Code, was proved beyond reasonable doubt.

31. **FINAL ORDERS:-**

- a) Accused 1 is found guilty and convicted of the offence of two counts of murder under section 203 as read with section 204 of the penal code.
- b) Accused 2 is acquitted under section 215 of the criminal procedure Code.
- c) Sentence of Accused 1 after sentence hearing.

Dated and signed at **Nairobi** this 11th 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. Omari

Accused - Both Present

Omari for DPP.

Mbeche for 2nd Accused.

Ms Kusolo for 1st Accused.

ORIGINAL